



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Gao v Canada Border Services Agency*, 2019 CART 8

Date: 20190711
Docket: CART – 2114

BETWEEN:

Lixia Gao,

APPLICANT

- and -

Canada Border Services Agency,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Ms. Lixia Gao, representing herself; and
Ms. Tara-Lee Fraser, representing the Respondent**

This matter arises from the Applicant's request to have the Canada Agricultural Review Tribunal (Tribunal) review the facts of Notice of Violation # 4971-19-0975, made pursuant to subsection 9(2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act \(AAAMP Act\)](#). For the reasons that follow, the Applicant's request is not admissible.



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1. BACKGROUND

[1] On May 11, 2019, the Applicant was served with Notice of Violation # 4971-19-0975 (NOV) upon her entry at the Toronto Lester B. Pearson International Airport for importing “various parts of chicken”, contrary to section 40 of the [Health of Animals Regulations](#). This NOV was issued with a penalty of 800\$.

[2] Upon being served with the NOV the Applicant choose not to dispute it. Instead she decided to acknowledge that the violation was committed and paid, in accordance with subsection 10(2) of the [AAAMP Act](#), a reduced penalty of \$400. In spite of this agreement, on May 12, 2019, the Tribunal received the Applicant’s request to review the NOV on the basis that the penalty was wrongly assessed. The Applicant asserts that only 1.558KG of chicken was imported – not 3.4KG as specified in the NOV.

2. ISSUE

[3] The Tribunal must determine whether the Applicant’s request for review is admissible.

3. CONSIDERATIONS

[4] Section 48 of the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (*Rules*) requires that the Tribunal render a decision on the admissibility of the Applicant’s request. Bars to the admissibility, include the Tribunal’s jurisdiction and the parties compliance with its enabling statute and [Regulations](#).

[5] Subsection 9(2) of the [AAAMP Act](#) reveals that a dual-track procedure for challenging a notice of violation, with a penalty, exists – either before the Minister or to the Tribunal. There is no ambiguity in the language used to establish these review mechanisms. Both are alternatives to paying the penalty set out in a Notice of Violation:

(2) Instead of paying the penalty set out in a notice of violation or, where applicable, the lesser amount that may be paid in lieu of the penalty, the person named in the notice may, in the prescribed time and manner,

(a) if the penalty is \$2,000 or more, request to enter into a compliance agreement with the Minister that ensures the person’s compliance with the agri-food Act or regulation to which the violation relates;

- (b) request a review by the Minister of the facts of the violation; or*
(c) request a review by the Tribunal of the facts of the violation.

[6] It is undisputed that the Applicant agreed not to contest the NOV by choosing to pay a reduced amount of penalty. The language used in the section of the NOV where travellers can enter into this type of agreement is clear. It states:

"I do not wish to dispute this Notice of Violation with penalty and choose to pay the penalty within 15 days of the date of service of this notice. I understand that by agreeing to pay this penalty, I am acknowledging that I have committed the violation noted."

[7] The Tribunal has no jurisdiction to review the facts of this NOV because the Applicant agreed to pay the reduced amount of penalty. Accordingly, she is deemed to have committed the violation pursuant to subsection 9(1) of the [AAAMP Act](#).

4. ORDER

[8] For the reasons above, I ORDER that the Applicant's request to have the Tribunal review the facts of the NOV, is **not admissible**.

Dated at Ottawa, Ontario, on this 11th day of July 2019.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal