



Citation: *Ruan v Canada (Canada Border Services Agency)*, 2020 CART 12

Docket: CART – 2137

BETWEEN:

DONGLIANG RUAN

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Dongliang Ruan, representing himself; and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent**

DECISION DATE: April 14, 2020

WRITTEN SUBMISSION ONLY

DECISION

The Canada Agricultural Review Tribunal, by ORDER, confirms the settlement agreement reached by the parties.

1. OVERVIEW

[1] This matter concerns a request for review of the Notice of Violation #8212-19-1198 (NOV) by the Applicant to the Canada Agricultural Review Tribunal (Tribunal), pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] On July 18, 2019, following his arrival at Vancouver International Airport, Mr. Ruan allegedly imported to Canada an animal or thing, to wit: cooked duck meat, without a certificate or licence to do so and did not declare these products to a Border Services Officer. Consequently, the Canada Border Services Agency (Agency) issued him a NOV with a penalty of \$1300 for a “very serious” violation of section 16(1) of the [Health of Animals Act](#).

2. PROCEDURAL HISTORY

[3] On July 25, 2019, Mr. Ruan applied to the Tribunal for a review of the NOV #8212-19-1198 pursuant to paragraph 9(2)(c) of the [AAAMP Act](#).

[4] On October 2, 2019, the Tribunal found the request for review admissible.

3. OFFER TO SETTLE

[5] On October 30, 2019, the Agency presented a written offer to settle the case to Mr. Ruan, which offered to amend the NOV originally issued with a penalty of \$1300, to a NOV with warning, without the monetary penalty.

[6] Mr. Ruan communicated his acceptance to this offer via email, received by the Tribunal on November 1, 2019.

[7] As explained in the Agency’s offer to settle, a violation will remain in the Agency’s records for the next six years from the date of violation.

[8] Mr. Ruan must understand that all travelers entering into Canada may be subject to secondary customs examinations by the Agency, regardless of previous enforcement action.

4. THE SETTLEMENT

[9] The Tribunal has the sole and exclusive jurisdiction to hear and determine all questions of fact or law regarding any matter over which it is given jurisdiction under the [AAAMP Act](#) or any Act of Parliament, pursuant to section 38(1) of the [AAAMP Act](#).

[10] Moreover, as a court of record, the Tribunal is vested with additional powers to the ones explicitly conferred by its enabling legislation. These powers are available to the Tribunal as they are necessary to fulfill the purpose and objective of the statutory regime created by the legislature.¹ This ensures the enforcement of its orders and other matters necessary to duly exercise its jurisdiction pursuant to section 41(2) of the [AAAMP Act](#).

[11] The Tribunal does not have the explicit authority to vary a NOV with penalty to a NOV without penalty. However, the Tribunal has the jurisdiction by necessary implication and practical necessity to give effect to the settlement agreement as established in *Atkinson*.²

[12] Given these powers provided to me by statute, I agree that the most just and efficient outcome in this case is to amend the NOV with penalty of \$1300 to a Notice of Violation without penalty in accordance with the agreed settlement by the parties.

[13] This is not an order of the Tribunal which can be the subject of a judicial review application pursuant to section 38(2) of the [AAAMP Act](#).

[14] This settlement agreement constitutes a final settlement of the rights of both parties in relation to file CART - 2137 and the events which occurred on July 18, 2019.

[15] This settlement should not be cited as a precedent or otherwise relied on except in relation to the current NOV.

5. ORDER

[16] As requested by the parties and pursuant to the powers coffered to me, I confirm, by **ORDER**, the settlement agreement.

[17] I wish to inform Mr. Ruan that this violation is not a criminal offence. After five years, he may apply to the Minister of Public Safety and Emergency Preparedness to have the violation removed from the records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Ottawa, Ontario, on this 14th day of April 2020.

¹ [ATCO Gas & Pipelines Ltd. v. Alberta \(Energy & Utilities Board\)](#), 2006 SCC 4 at para 51.

² *Atkinson v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 CART 3.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal