



Citation: *Rafael v Canada (Canada Border Services Agency)*, 2020 CART 19

Docket: CART - 2148

BETWEEN:

VICTOR F. RAFAEL

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Victor F. Rafael, representing himself; and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent**

DECISION DATE: August 27, 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 # 4971-19-2001 (NOV) by Mr. Rafael 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 October 12, 2019, following his arrival at the Toronto International Airport (Pearson), Mr. Rafael allegedly importing milk or a milk product without the required certificate to do so. Consequently, the Canada Border Services Agency (Agency) issued him a NOV for violating paragraph 34(1)(b) of the [Health of Animals Regulations](#).

2. PROCEDURAL HISTORY

[3] On October 27, 2019, Mr. Rafael applied to the Tribunal for a review of the NOV # 4971- 19-2001 pursuant to paragraph 9(2)(c) of the [AAAMP Act](#).

[4] On February 13, 2020, the Tribunal found the request for review admissible.

3. OFFER TO SETTLE

[5] On February 28, 2020, the Agency presented a written offer to settle the case to Mr. Rafael, which offered to amend the NOV originally issued with a penalty of \$800 to a NOV with warning and no monetary penalty.

[6] Mr. Rafael communicated his acceptance to this offer via email, received by the Tribunal on March 4, 2020.

[7] As explained in the Agency's offer to settle, their systems will reflect that a settlement has been reached and confirm the removal of the penalty amount.

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

[9] Furthermore, I wish to reiterate to Mr. Rafael that the introduction of undeclared food, plant or animal products into Canada can result in serious risk to our plant and animal health and can endanger our food supply, agriculture, economy, environment and even our own wellbeing.

4. THE SETTLEMENT

[10] 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](#).

[11] 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](#).

[12] 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.

[13] 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 a penalty of \$800 to a NOV with warning and no monetary penalty.

[14] 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](#).

[15] This settlement agreement constitutes a final settlement of the rights of both parties in relation to CART - 2148 and the events which occurred on October 12, 2019.

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

5. ORDER

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

Dated at Ottawa, Ontario, on this 27th day of August 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