



Citation: *Wahid v Canada (Canada Border Services Agency)*, 2020 CART 22

Docket: CART - 2146

BETWEEN:

ALINA WAHID

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Ms. Alina Wahid, representing herself; and
Ms. Shawna Baxter, representing the Respondent**

DECISION DATE: August 29, 2020

WRITTEN SUBMISSION ONLY

1. OVERVIEW

[1] This matter concerns a request by Ms. Wahid to the Canada Agricultural Review Tribunal (Tribunal) for review of Notice of Violation # 3961-19-2501 (NOV), pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act \(AAAMP Act\)](#).

[2] It is alleged that on October 14, 2019, following her arrival at Montreal International Airport (Pierre Elliott-Trudeau), Ms. Wahid imported quantities of beef, chicken and butter without presenting them for inspection. Consequently, the Canada Border Services Agency (Agency) issued her a NOV with a penalty of \$1,300 for violating subsection 16(1) of the [Health of Animals Act](#).

[3] There are two issues before the Tribunal. As a preliminary matter the Tribunal must determine whether it should endorse the Agency's consent to the appeal. Secondly, if answered in the negative, the Tribunal must make a finding as to whether or not the Agency has proven all the essential elements to establish Ms. Wahid violated subsection 16(1) of the [Health of Animals Act](#).

[4] In this instance, I find that the Tribunal should not endorse the Agency's consent to the appeal because the request to do so offers no argument or evidence to conclude that Ms. Wahid did not violate subsection 16(1) of the [Health of Animals Act](#) as alleged in the NOV. Pursuant to sections 14 and 38 of the [AAAMP Act](#), the authority to set aside a Minister's decision or to cancel a NOV rests solely with the Tribunal. The Tribunal has the exclusive jurisdiction to hear and determine all questions of fact or law in relation to a request for review and accordingly it must fulfill its legislative mandate by undertaking a review of the facts surrounding the issuance of the NOV.

[5] For the reasons that follow, I find that the Agency has not established on a balance of probabilities the essential elements for a violation of subsection 16(1) of the [Health of Animals Act](#). Accordingly, the NOV issued to Ms. Wahid is dismissed, and hold that no monetary penalty is payable to the Agency.

2. BACKGROUND

[6] On December 2, 2019, the Tribunal determined that the request for review was admissible. In a letter informing the parties of its admissibility decision the Agency was prompted to comply with section 33 of the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\) \(Tribunal Rules\)](#) which required them to file a report and supporting documentation in relation to the subject NOV by January 3, 2020.

[7] On December 19, 2019, the Tribunal received correspondence from the Agency advising that it was proceeding with the cancellation of the NOV. This correspondence provided no legal basis or authority for the position that it could unilaterally cancel a NOV the Tribunal was seized with reviewing. Furthermore, the requested report and supporting documentation were not filed with the Tribunal.

3. PRELIMINARY MATTER: SHOULD THE TRIBUNAL ENDORSE THE AGENCY'S CONSENT TO THE APPEAL?

[8] Similar to my analysis in *Mustafa*¹, the Tribunal's authority when reviewing a NOV is clear. Pursuant to paragraph 14(1)(b) of the [AAAMP Act](#) it must determine whether or not the person requesting the review committed the alleged violation. Where the Tribunal decides that the person committed a violation it must consider whether the amount of the penalty was established in accordance with the regulations.

[9] After undertaking a thorough analysis of the applicable legal framework, I find that the Tribunal cannot endorse the Agency's consent to the appeal. I will now proceed to the analysis of the facts and applicable law of the case.

4. ISSUE

[10] The issue is whether Ms. Wahid violated subsection 16(1) of the [Health of Animals Act](#) as alleged in the NOV?

5. ANALYSIS

[11] In order to prove a violation of subsection 16(1) of the [Health of Animals Act](#) the onus is on the Agency to establish the following three essential elements:

- I. Ms. Wahid is the person who committed the violation; and
- II. Ms. Wahid imported an animal product or animal by-product into Canada; and
- III. Ms. Wahid failed to present the animal product or animal by-product to Agency officers before being referred to the customs secondary examination area for luggage inspection.

¹ *Mustafa v Canada Border Services Agency*, 2020 CART 16, at para 17.

[12] As mentioned previously, in this case the report and supporting documentation relevant to this review have not been filed and the regulatory timeline for doing so has passed. Therefore, there is no evidence before the Tribunal capable of establishing a violation of subsection 16(1) of the [Health of Animals Act](#).

6. ORDER

[13] On the basis that the Agency has failed to provide evidence to substantiate a violation of subsection 16(1) of the [Health of Animals Act](#), I **ORDER**, that the NOV issued to Ms. Wahid is dismissed, and no monetary penalty is payable to the Agency.

Dated at Ottawa, Ontario, on this 29th day of August 2020.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal