

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Canada, Ottawa K1A 0B7

Docket: CART – 2042

METUSH MUSTAFA

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Metush Mustafa the Applicant; and
Mr. Christopher Hayes and Ms. Sandy Kozak representing the
Respondent**

ORDER DATE: December 20, 2019

In the matter of an application to the Canada Agricultural Review Tribunal pursuant to paragraph 9(2)c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), for a review of the facts of Notice of Violation # 4974-18-1868 accompanied by an \$800 penalty issued pursuant to section 40 of the [Health of Animals Regulations](#).

**ORDER ARISING FROM THE RESPONDENT'S SUBMISSIONS RECEIVED ON DECEMBER
4, 2019**

1. BACKGROUND TO THE CURRENT ORDER

[1] Following the issuance of the Notice of Violation (NOV) # 4974-18-1868, the Applicant requested, on October 15, 2018, a review of the NOV by the Minister of Public Safety and Emergency Preparedness (Minister) pursuant to paragraph 9(2)b) of the [Agriculture and Agri- Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] On November 14, 2018, the Minister acknowledged the receipt of the Applicant's request and informed him that a ministerial decision, identified as # 18-02900, would be rendered on the basis of the evidence submitted if none was received within 30 days.

[3] On November 28, 2018, the Canada Agricultural Review Tribunal (Tribunal) received the Applicant's request for the review of the Minister's decision # 18-02900.

[4] As the Applicant's true intention was solely to proceed before the Tribunal, the Respondent decided to close the Applicant's request for a ministerial review. Accordingly, on November 26, 2019, the Tribunal **ORDERED** that the Applicant's request for a review would proceed as a review of the facts of NOV # 4974-18-1868 in accordance with paragraph 9(2)c) of the [AAAMP Act](#). As such, parties were asked to summon witnesses at the hearing scheduled on **December 5, 2019**.

[5] On December 4, 2019, the Tribunal received an email from the Respondent stating that it would not be attending the hearing scheduled December 5, 2019, because of a change in its policy regarding the implementation of section 40 of the [Health of Animals Regulations](#) (HA Regulations). Without directly indicating how this would affect the Tribunal's authority to review the matter at hand or its potential outcome, it implied that the hearing should be cancelled.

[6] On December 4, 2019, the Tribunal **ORDERED** that the hearing scheduled on **December 5, 2019** would proceed. Insufficient information was provided to the Tribunal to assess how a recent change in the Respondent's policy would impact the Tribunal's mandate to determine whether the Applicant should be held liable for a violation that allegedly occurred in October 2018.

[7] Later the same day, the Respondent provided another submission about the change in its policy in relation to the implementation of section 40 of the [HA Regulations](#). It submitted that subsection 16(1) of the [Health of Animal Act](#) (HA Act) was the appropriate authority to apply when a traveller fails to present an animal product - not section 40 of the [HA Regulations](#). As a result, the Respondent stated it consents to the Applicant's appeal without making any admission or taking a position on the merit of the appeal. The Respondent confirmed it would proceed to cancel the NOV with penalty issued against the Applicant.

[8] At the hearing on December 5, 2019, I provided a copy of the Respondent's submissions to the Applicant. I informed the Applicant that I would take the Respondent's consent to the appeal under reserve as I could not render a decision without conducting a proper analysis. I also stated I would be seeking further submissions from the parties to inform my analysis.

[9] In light of the latter, for the reasons that follow, I **ORDER** that the Respondent by no later than **January 21, 2020**, provide the Tribunal with further submissions answering the following questions:

1. Did the Applicant, based on the applicable law and the evidence on file, violate section 40 of the [HA Regulations](#) when he failed to declare he was importing sausages on October 9, 2018?;
2. On what authority can the Tribunal endorse the Respondent's consent to the appeal?; and
3. On what authority can the Agency now cancel the NOV # 4974-18-1868?

[10] The Applicant will also be given 30 days, from the day the Respondent's submissions are received, to provide a reply.

2. AUTHORITY OF THE TRIBUNAL

[11] Pursuant to section 38 of the [AAAMP Act](#) the Tribunal has "sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which it is given jurisdiction under this Act or any other Act of Parliament". A review of a NOV made in accordance with paragraph 9(2)c) of the [AAAMP Act](#) falls within its jurisdiction.

[12] The powers of the Tribunal after it concludes a review of the NOV facts are clearly set out in subsection 14(1)b) of the [AAAMP Act](#). It can only determine whether or not the person requesting the review committed a violation.

[13] In the case at bar, this means the Tribunal must review the facts of NOV # 4974-18-1868, consider the applicable law and binding cases from the Federal Court of Appeal and determine whether the Applicant should be held liable for a violation of section 40 of the [HA Regulations](#).

3. ANALYSIS

[14] The Respondent, contrary to its written submissions, appears to now be requesting the Tribunal allow it to consent to the appeal on the basis that the Canada Border Services Agency (Agency) should have used its authority under subsection 16(1) of the [HA Act](#) and not section 40 of the [HA Regulations](#) to issue a NOV to the Applicant. All this in order for the Agency to cancel the NOV issued against the Applicant.

[15] In effect, the Respondent is asking the Tribunal to refrain itself from determining whether or not the Applicant violated section 40 of the [HA Regulations](#) and allow it to cancel the NOV after the fact. Ultimately, although this would be in the Applicant's best interest, I am not persuaded at this point that the [AAAMP Act](#) allows the Tribunal to discharge itself of its obligations.

[16] Additionally, the limited submissions provided by the Respondent do not provide enough information in order for the Tribunal to endorse its request. Indeed, it does not provide the legal basis on which it concluded it did not have the authority to issue the violation against the Applicant pursuant to section 40 of the [HA Regulations](#). Furthermore, the submissions do not provide an evidentiary basis on which the Tribunal could conclude that the Applicant did not commit the alleged violation.

[17] Considering the above-mentioned, in order to ensure the Tribunal acts within its authority and fulfills its legislative mandate, it is necessary that the parties provide further submissions.

4. ORDER

[18] I **ORDER** the Respondent to provide written submissions by no later than **January 21, 2020**, which will answer the following questions:

1. Did the Applicant, based on the applicable law and the evidence on file, violate section 40 of the [HA Regulations](#) when he failed to declare he was importing sausages on October 9, 2018?;
2. On what authority can the Tribunal endorse the Respondent's consent to the appeal?; and
3. On what authority can the Agency now cancel the NOV # 4974-18-1868?

[19] I **ORDER** that the Applicant is also given **30 days** from the day the Respondent's submissions are received to provide a reply.

Dated at Ottawa, Ontario, on this 20th day of December 2019.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal