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Citation: *Markandu v Minister of Public Safety and Emergency Preparedness*, 2021 CART 01

Docket: CART – 2003

BETWEEN:

MAHESWARAN MARKANDU

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Marthanne Robson, Member

**WITH: Ms. Janani Maheswaran, representing the Applicant; and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent**

DECISION DATE: January 22, 2021

WRITTEN SUBMISSION ONLY

DECISION

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

1. OVERVIEW

[1] The Applicant requested a review by the Canada Agricultural Review Tribunal (Tribunal) of the Minister's decision, dated September 24, 2018, confirming the issuance of Notice of Violation #4974-18-0411 (NOV) with a penalty of \$800.

[2] The NOV alleges that on February 18, 2018, Mr. Markandu returned from Cuba via air and failed to declare to a Canada Border Services Agency (Agency) Officer, banana roots with soil, contrary to section 39 of the [Plant Protection Regulations](#).

2. OFFER TO SETTLE

[3] On January 11, 2021, the Agency, on behalf of the Minister, made Mr. Markandu a written offer to settle this case by amending the NOV originally issued with a penalty of \$800 to a NOV with warning, without monetary penalty.

[4] Ms. Maheswaran, on behalf of Mr. Markandu accepted this offer via email dated January 11, 2021.

[5] The Agency's offer to settle noted that a violation will remain in the Agency's records for a period of six years from the date of violation. In addition, the existing record of the violation may be considered in the event of any future instances of non-compliance.

3. THE SETTLEMENT

[6] 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 [Agriculture and Agri- Food Administrative Monetary Penalties Act](#) (AAAMPA) or any Act of Parliament. (Subsection 38(1) of the [AAAMPA](#))

[7] The Tribunal is a court of record and has powers over all matters necessary or proper for the due exercise of its jurisdiction and to fulfil the purpose and objective of the statutory regime. (Section 8 of the [Canada Agricultural Products Act](#) and section 41 of the [AAAMPA](#))

[8] The [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) are interpreted and applied in order to permit the just, most expeditious and least expensive conduct of proceedings. The Tribunal may determine any procedural matter not provided for in the Rules in a manner consistent with the Rules.

[9] 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 demonstrated in the Tribunal's decision in [Atkinson](#)¹.

[10] Given these powers provided to the Tribunal by statute, I find that the most just, expeditious and least expensive outcome in this case is to amend the NOV with penalty of \$800 to a NOV without penalty in accordance with the settlement agreed to by the parties.

[11] This settlement constitutes a final settlement of the rights of both parties in relation to docket CART - 2003 and the events which occurred on February 18, 2018.

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

4. ORDER

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

[14] I wish to inform Mr. Markandu 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 [AAAMPA](#).

Dated at Ottawa, Ontario, on this 22nd day of January 2021.

(Original signed)

Marthanne Robson
Member
Canada Agricultural Review Tribunal

¹ [Atkinson v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2018 CART 3.