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Citation: *Arbib v Minister of Public Safety and Emergency Preparedness*, 2021 CART 05

Docket: CART – 2173

BETWEEN:

NOOMENE ARBIB

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

[Translation of the official French version]

BEFORE: Luc Bélanger, Chairperson

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

DECISION March 12, 2021

DATE:

WRITTEN SUBMISSIONS ONLY

1. OVERVIEW

[1] This matter concerns a request for review by Mr. Arbib to the Canada Agricultural Review Tribunal (Tribunal) involving the decision rendered by the Minister of Public Safety and Emergency Preparedness (Minister) with regard to Notice of Violation number 3961-20-0513, in accordance with subsection 13(2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] It is alleged that on March 4, 2020, when he arrived at the Montréal-Pierre Elliott Trudeau International Airport, Mr. Arbib imported “Similac Alimentum” without presenting it for inspection. As a result, the Canada Border Services Agency (Agency) issued him a Notice of Violation with a \$1,300 penalty for violating subsection 16(1) of the [Health of Animals Act](#) (HAA). This is a [translation] “very serious violation” within the meaning of section 4 of the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (Regulations).

[3] On March 12, 2020, Mr. Arbib filed a request for review of the Notice of Violation with the Minister pursuant to paragraph 9(2)(b) of the [AAAMP Act](#).

[4] On June 18, 2020, the Minister rendered Decision No. 20-00714 confirming Mr. Arbib’s responsibility for the facts alleged in the Notice of Violation. It is this decision that is the subject of the request for review and the Tribunal must rule on its admissibility pursuant subsection 48(1) [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (Rules).

[5] A request will be declared admissible if the applicant meets the requirements set out in the [AAAMP Act](#) the [Regulations](#) and the [Rules](#).

[6] For the reasons that follow, this request for review is not admissible.

2. BACKGROUND

[7] The Notice of Violation was given to Mr. Arbib in person on March 4, 2020, following his arrival at the Montréal-Pierre-Elliott Trudeau International Airport.

[8] Mr. Arbib sent his request for review of the Notice of Violation to the Minister on March 12, 2020, by registered mail.

[9] The Minister conducted a review in accordance with paragraph 9(2)(b) of the [AAAMP Act](#) and upheld the issuance of the Notice of Violation on June 18, 2020, with Decision No. 20-00714.

[10] On October 30, 2020, the Tribunal received the request for review of the Minister's decision by regular mail.

[11] On October 30, 2020, the Agency confirmed by email that the administrative monetary penalty of \$1,300 had not been paid and that the Minister had rendered a decision regarding the case in question on June 18, 2020.

3. ISSUE

[12] Is the request for review admissible according to the conditions provided by Parliament?

4. ANALYSIS

[13] A request for review is a right which Parliament has extended to applicants which allows them, for a very limited expenditure in time and money, to have a Notice of Violation reviewed by an independent body. However, when played out to its full conclusion, including the filing of pleadings, the holding of the hearing and the rendering of a decision, considerable time and money from all parties will be expended. For this reason, legislators have placed some basic requirements on applicants that they must meet for their rights to be preserved. Where an applicant does not meet the requirements of the [AAAMP Act](#), the [Regulations](#) or the [Rules](#), the Tribunal may rule that the request for review is not admissible.¹

[14] The Tribunal is an expert and independent body constituted by Parliament pursuant to subsection 27(1) of the [AAAMP Act](#).

[15] It has exclusive jurisdiction pursuant to subsection 38(1) of the [AAAMP Act](#) to respond to requests for review of matters arising from the issuance of agriculture and agri-food administrative monetary penalties.

[16] The [AAAMP Act](#), the [Regulations](#) and the [Rules](#), state the admissibility requirements for a request for review. It is important to note that a case will be declared inadmissible where an applicant has already paid the administrative monetary penalty.

[17] In addition, a case will be declared inadmissible where the request for review has not been filed within the prescribed time, in accordance with the conditions provided by Parliament.

[18] Paragraph 13(a) of the [Regulations](#) specifies that the time within which a request for review of the Minister's decision must be filed with the Tribunal:

¹ [Wilson v Canada \(Canadian Food Inspection Agency\)](#), 2013 CART 25 at para 10.

13 *If a person is notified that the Minister, having concluded a review, has decided that the person committed a violation:*

(a) the time within which the person may request a review of the Minister's decision by the Tribunal is 30 days after the day on which the notice is served and the request must be in writing...

[19] Furthermore, it is important to note that the time limits for filing a request for review set out in the [AAAMP Act](#) and the [Regulations](#) cannot be extended by the Tribunal.²

[20] The time limit set out in paragraph 13(a) of the [Regulations](#) that Mr. Arbib was to respect in order to preserve his right of review with the Tribunal was 30 days after the notice of the Minister's decision was served.

[21] The Minister's decision was rendered on June 18, 2020, and was sent that same day by email. After the email was not opened by Mr. Arbib, the Agency sent the decision by registered mail. According to the accompanying letter, the decision was sent on July 15, 2020, in accordance with subsection 9(2) of the [Regulations](#):³

9(2) [a] document sent by registered mail is served on the 10th day after the date indicated in the receipt issued by a post office.

[22] The Minister's decision is deemed to have been served on Mr. Arbib on July 27, 2020. Therefore, as established under paragraph 13(a) of the [Regulations](#), the calculation of the 30 days began on July 28, 2020.

[23] As a result, the last day Mr. Arbib could file his request for review with the Tribunal was August 26, 2020.

[24] Mr. Arbib submitted his request for review on October 30, 2020. It is clear that the 30 day time limit set out in paragraph 13(a) of the [Regulations](#) was not met. On this ground, the request for review filed with the Tribunal is therefore inadmissible.

5. ORDER

[25] As a result, **I ORDER** that the request for review of Minister's Decision No. 20-00714 be declared inadmissible in accordance with subsection 13(2) of the [AAAMP Act](#).

Dated at Ottawa, Ontario, this 12th day of March 2021.

² [Clare v. Canada \(Attorney General\)](#), 2013 FCA 265.

³ [Adebogun v. Canada \(Attorney General\)](#), 2017 FCA 242.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal