



Citation: *Chong-Ling v Canada Border Services Agency*, 2021 CART 03

Docket: CART – 2167

BETWEEN:

ANTHONY CHONG-LING

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Anthony Chong-Ling, represented by Mrs. Amelia Chong-Ling; and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent**

DECISION DATE: February 16, 2021

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 # 4974-20-0368 (NOV) by Mr. Chong-Ling to the Canada Agricultural Review Tribunal (Tribunal), pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act \(AAAMPA\)](#).

[2] On February 25, 2020, following his arrival at the Pearson International Airport, Mr. Chong-Ling allegedly imported 7 live potatoes with soil, without the required certificate to do so. Consequently, the Canada Border Services Agency (Agency) issued him a NOV for violating paragraph 39 of the [Plant Protection Regulations](#).

2. PROCEDURAL HISTORY

[3] On March 9, 2020, Mr. Chong-Ling applied to the Tribunal for a review of the NOV # 4974-20-0368.

[4] On December 9, 2020, the Tribunal determined that the request for review was admissible.

3. OFFER TO SETTLE

[5] On December 11, 2020, the Tribunal sought clarifications with regard to correspondence from the Agency in this case.

[6] On December 17, 2020, the Agency in response to the request for clarifications presented a written offer to settle the aforementioned case concerning Mr. Chong-Ling, offering to replace the NOV originally issued with a penalty of \$800 to a NOV with warning and no monetary penalty.

[7] Mr. Chong-Ling communicated his acceptance to this offer via email, received by the Tribunal on December 29, 2020.

[8] 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.

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

[10] Furthermore, I wish to reiterate to Mr. Chong-Ling 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

[11] 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 [AAAMPA](#) or any Act of Parliament, pursuant to section 38(1) of the [AAAMPA](#).

[12] 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 [AAAMPA](#).

[13] The Tribunal does not have the explicit authority to replace 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.

[14] 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.

[15] This settlement agreement constitutes a final settlement of the rights of both parties in relation to CART – 2167 and the events which occurred on February 25, 2020.

[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.

[18] I wish to inform Mr. Chong-Ling 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](#).

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.

Dated at Ottawa, Ontario, on this 16th day of February 2021.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal