



Citation: *Abay v Canada Border Services Agency*, 2020 CART 27

Docket: CART - 2172

BETWEEN:

MURAT ABAY

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Murat Abay representing himself; and
Mr. Jonathan Ledoux-Cloutier representing the Respondent**

DECISION DATE: December 8, 2020

1. INTRODUCTION

[1] This matter concerns the request for review of Notice of Violation (NOV) # 4971-20-0855 pursuant to paragraph 9(2)(c) of the [*Agriculture and Agri-Food Administrative Monetary Penalties Act*](#) (AAAMP Act).

[2] The issue is to determine the admissibility of this request. I must evaluate whether or not Mr. Abay satisfies the admissibility threshold established by the [*AAAMP Act*](#), the [*Agriculture and Agri Food Administrative Monetary Penalties Regulations*](#) and the [*Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)*](#) (*Tribunal Rules*).

[3] On August 19, 2020, Mr. Abay was served with this NOV upon his arrival at the Pearson International Airport in Toronto for importing 45 balls of butter, 35kg each, which were not declared. Thereby, this contravened subsection 16(1) of the [*Health of Animals Act*](#). This violation is classified as “very serious” and amounts to a penalty of \$1,300 (reducible by 50% if paid within 15 days).

[4] For the following reasons, I find Mr. Abay’s request for review is inadmissible on the basis that he has paid the amount of the penalty imposed. Therefore, Mr. Abay is deemed to have committed the violation in accordance with section 9 of the [*AAAMP Act*](#).

2. BACKGROUND

[5] On September 9, 2020, Mr. Abay filed via registered mail a request for review, dated September 9, 2020, of the NOV. The request for review was received by the Canada Agricultural Review Tribunal (Tribunal) on October 2, 2020.

[6] On October 5, 2020, the Tribunal sent a first acknowledgement letter to both parties requesting them to comply with sections 30 and 31 of the [*Tribunal Rules*](#) on or before October 20, 2020.

[7] On October 5, 2020, the Canada Border Services Agency (Agency) complied with rule 30 of the [*Tribunal Rules*](#), by filing with the Tribunal via email a copy of the NOV. The proof of service of the NOV in the email also confirmed that the penalty associated to the NOV had not been paid as of the date of filing.

[8] On October 15, 2020, Mr. Abay requested to effectuate payment for the penalty of the NOV instead of carrying out the request for review. The Tribunal sought confirmation of payment from the Agency on November 4, 2020. This payment was confirmed via email on November 5, 2020.

3. ISSUE

[9] Does Mr. Abay meet the admissibility threshold established in the [AAAMP Act](#) and its regulations? The threshold consists of three requirements:

1. filing the request for review in the prescribed time and manner;
2. the non-payment of the penalty associated to the notice of violation; and
3. providing the required information and motives of the request for review in accordance with the [Tribunal Rules](#).

4. ANALYSIS

[10] According to subsection 32(1) of the [Tribunal Rules](#), a decision pertaining to the admissibility of a request for review must be rendered within 60 days from the day the first acknowledgment of receipt is sent to the parties.

[11] The legislative scheme encompassed in the [AAAMP Act](#) provides a review mechanism whereby a NOV can be reviewed either by the Minister or by the Tribunal. The legislation further provides the Applicant an opportunity to have a Minister's decision reviewed by the Tribunal if the Applicant first elected for a Ministerial review. In this case, Mr. Abay has elected to proceed by way of direct review by the Tribunal.

[12] However, in order to avoid the Tribunal and the respective parties unnecessarily expending resources, for example the filing of pleadings and the holding of a hearing, the [AAAMP Act](#) states as follows:

9 (1) *Where a notice of violation sets out a penalty and the person named in the notice pays, in the prescribed time and manner, the amount of the penalty or, subject to the regulations, the lesser amount set out in the notice that may be paid in lieu of the penalty,*

(a) *the person is deemed to have committed the violation in respect of which the amount is paid;*

(b) *the Minister shall accept that amount as and in complete satisfaction of the penalty; and*

(c) *the proceedings commenced in respect of the violation under section 7 are ended.*

[13] This provision coincides with the second threshold admissibility requirement, which is to determine whether the penalty associated to the NOV has been paid.

[14] In this case, Mr. Abay has paid the full amount of the violation, which is stated on the NOV as being \$1,300 to the Agency's satisfaction. The section of the NOV where Mr. Abay acknowledges having committed the violation explicitly reads as follows:

I understand that by agreeing to pay this penalty, I am acknowledging that I have committed the violation noted.

[15] The Tribunal has no jurisdiction to review the facts of the NOV when the penalty or lesser amount has been paid. Mr. Abay is deemed to have committed the violation pursuant to subsection 9(1) of the [AAAMP Act](#).

[16] Given my findings with regards to the second threshold requirement, it is not necessary to consider the other two requirements.

5. ORDER

[17] For the aforementioned reasons, I **ORDER** that the request for review is **inadmissible**.

[18] Finally, I wish to inform Mr. Abay that this violation is not a criminal offence. After five years, he is entitled to 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 [AAAMP Act](#).

Dated at Ottawa, Ontario, on this 8th day of December 2020.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal