



Citation: *Zacharias v Canada Border Services Agency*, 2021 CART 10

Docket: CART-2101

BETWEEN:

SANTHOSH ZACHARIAS

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Patricia Farnese, Member

**WITH: Mr. Santhosh Zacharias, representing himself, and
Ms. Sandy Kozak, representing the Respondent**

DECISION DATE: March 30, 2021

DECISION

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

1. OVERVIEW

[1] Mr. Zacharias requested a review by the Canada Agricultural Review Tribunal (Tribunal) to set aside the Notice of Violation (NOV) with a penalty of \$800 he received for failing to declare tomatoes from India when he entered Canada. Subsequent to Mr. Zacharias' request, the parties have entered into a settlement agreement that varies the NOV to one without a penalty. I find that it is just and expeditious to vary the NOV to give effect to their agreement.

[2] The settlement agreement varies NOV #4971-19-0254, issued on February 4, 2019 to Mr. Zacharias for violating section 39 of the [Plant Protection Regulations](#). The Tribunal does not have explicit authority to change a penalty to a warning. The Tribunal's authority to accept the agreement, however, arises by necessary implication and practical necessity from the mandate to facilitate just, most expeditious and least expensive proceedings.

2. OFFER TO SETTLE

[3] On February 5, 2021, the Canada Border Services Agency (Agency) made Mr. Zacharias a written offer to settle this case by amending the NOV originally issued with a penalty of \$800 to a NOV with only a warning.

[4] Mr. Zacharias accepted the settlement offer via email on February 8, 2021.

[5] The Agency's settlement offer noted that the violation will remain in the Agency's records for a period of six years from the date of the ticket. 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.¹

[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.²

¹ [Agriculture and Agri-Food Administrative Monetary Penalties Act, SC 1995, c 40, s 38\(1\)](#) [AAAMPA].

² [Canada Agricultural Products Act, RSC 1985, c 20, 4th Supp, s 8; AAAMPA supra](#) note 1, s 41.

[8] The [*Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)*](#) (*Rules*) 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*](#)³.

[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 with a warning 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 - 2101 and the events that occurred on February 4, 2019, which led to the issuance of NOV #4971-19-0254.

4. ORDER

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

[13] I wish to inform Mr. Zacharias 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 30th day of March, 2021.

(Original signed)

Patricia Farnese
Member
Canada Agricultural Review Tribunal

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