



Citation: *Waito Bros. Inc. v Canadian Food Inspection Agency*, 2021 CART 15

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BETWEEN:

WAITO BROS. INC.

APPLICANT

-AND-

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

WITH: Waito Bros. Inc. represented by Mr. Richard Waito

DECISION DATE: June 4, 2021

1. INTRODUCTION

[1] This matter concerns the request for review of Notice of Violation (Notice) #19200N2208 pursuant to subsection 8(1) 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 Waito Bros. Inc. (Waito) satisfies the admissibility threshold established by the [AAAMP Act](#), the [Agriculture and Agri Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations) and the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (Tribunal Rules).

[3] On January 4, 2021, Waito was served with this Notice after it was suspected, on October 19, 2019 of having loaded a goat kid that was unfit for transportation from its farm in Wroxeter, Ontario. Thereby, this contravened subsection 138(2)(a) of the [Health of Animals Regulations](#) (HA Regulations). This violation is classified as “Serious” and was served with a warning but no monetary penalty.

[4] For the following reasons, in accordance with section 32 of the [Tribunal Rules](#), I find Waito’s request for review is inadmissible on the basis that it had not respected the formalities as prescribed in the [AAAMP Regulations](#). Therefore, Waito is deemed to have committed the violation in accordance with section 8 of the [AAAMP Act](#).

2. BACKGROUND

[5] On February 2, 2021, Waito filed a request for review of the Notice via regular mail. The request for review was received by the Canada Agricultural Review Tribunal (Tribunal) on February 9, 2021.

[6] On February 10, 2021, the Tribunal sent a first acknowledgement letter to both parties requesting them to comply with rules 30 and 31 of the [Tribunal Rules](#) on or before March 23, 2021. Additionally, Waito was urged to comply with section 13 of the [Tribunal Rules](#) before February 25, 2021 by sending the request via registered mail to the Tribunal in order to allow its request for review to be considered for admissibility.

[7] On February 11, 2021, the Canadian Food Inspection Agency (Agency) complied with rule 30 of the [Tribunal Rules](#), by filing a copy of the Notice with the Tribunal via email.

[8] On February 25, 2021, Waito sent the information requested in a reply by regular mail to the Tribunal’s acknowledgement letter requesting it to comply with rule 31 of the [Tribunal Rules](#).

[9] On April 7, the Tribunal sent a final acknowledgement letter to Waito asking it to comply with rules 13 and 31 of the [Tribunal Rules](#), to which no reply was received.

3. ISSUE

[10] Does Waito 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, if applicable ; and
3. providing the required information and motives of the request for review in accordance with the [Tribunal Rules](#).

4. ANALYSIS

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

[12] The [AAAMP Act](#), the [AAAMP Regulations](#) and the [Tribunal Rules](#) require that the Tribunal, before it proceeds to a full hearing of a matter, makes a decision on the admissibility of an applicant's request for the review. Absolute bars to admissibility arise when the applicant has already paid the penalty attached to the Notice, or has failed to file a request for review within the prescribed time and manner as set out in the [AAAMP Act](#) and the [AAAMP Regulations](#).

[13] Subsections 11(1), 14(1) and 14(2) of the [AAAMP Regulations](#) outline the required statutory period and the permitted modes of delivery for the filing of a request for review of the facts of a violation before the Tribunal:

***11 (1)** Where a person named in a notice of violation that contains a warning requests, pursuant to subsection 8(1) of the Act, a review of the facts of the violation by the Minister or the Tribunal, the request shall be made in writing within 30 days after the day on which the notice is served.*

[...]

***14 (1)** A person may make a request referred to in section 11, 12 or 13 by delivering it by hand or by sending it by registered mail, courier or fax or other electronic means to a person and place authorized by the Minister.*

(2) Where a person makes a request referred to in subsection (1), the date of the request is

(a) the date on which the request is delivered to the authorized recipient, if the request is delivered by hand;

(b) the earlier of the date on which the request is received by the authorized recipient and the date on the receipt given to the person by a post office or courier, if the request is sent by registered mail or courier; or

(c) the date on which the request is sent, if the request is sent by fax or other electronic transmission.

[14] Waito had the responsibility to file the request for review by a permitted method of transmission within 30 days after having been served the Notice, according to subsections 11(1) and 14(1) of the [AAAMP Regulations](#). As it failed to send the initial request for review using one of the listed methods, such as registered mail, the Tribunal had not received the request for review within the 30-day period, and there is no valid request for review before the Tribunal.

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

5. ORDER

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

[17] Finally, I wish to inform Waito that this violation is not a criminal offence. After five years, Waito is entitled to apply to the Minister of Agriculture and Agri-Food to have the Notice removed from the records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Ottawa, Ontario, on this 4th day of June 2021.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal