



Citation: *Acheampong v Canada Border Services Agency*, 2021 CART 20

Docket: CART-2021-BNOV-018

BETWEEN:

EBENEZER KUSI ACHEAMPONG

APPLICANT

-AND-

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Ebenezer Kusi Acheampong, representing himself; and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent**

DECISION DATE: July 26, 2021

1. INTRODUCTION

[1] This matter concerns the request for review of Notice of Violation (Notice) # 4974-21-0223 pursuant to subsection 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. Ebenezer Acheampong 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 April 27, 2021, Mr. Acheampong was served with this Notice at the Toronto Pearson International Airport for having allegedly failed to present oxtail and cow feet in his possession upon entering the country. Thereby, this contravened subsection 16(1) of the [*Health of Animals Act*](#) (HA Act). This violation is classified as “Very Serious” and was served with a \$1,300 monetary penalty.

[4] For the following reasons, in accordance with section 32 of the [*Tribunal Rules*](#), I find Mr. Acheampong’s request for review is inadmissible because it was not sent by registered mail within the time limit prescribed by subsection 14(3) of the [*AAAMP Regulations*](#). Therefore, Mr. Acheampong is deemed to have committed the violation in accordance with section 9 of the [*AAAMP Act*](#).

2. BACKGROUND

[5] On May 7, a request for review of the Notice was received by the Canada Agricultural Review Tribunal (Tribunal) which Mr. Acheampong submitted via email.

[6] On May 7, 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 May 25, 2021. Additionally, Mr. Acheampong was urged to comply with section 13 of the [*Tribunal Rules*](#) before May 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 May 13, 2021, the Canada Border Services Agency (Agency) complied with rule 30 of the [*Tribunal Rules*](#), by filing a copy of the Notice with the Tribunal via email.

[8] On May 25, 2021, Mr. Acheampong sent a request for deferred payment of the violation’s corresponding penalty in a reply by email to the Tribunal’s acknowledgement letter requesting him to comply with rule 31 of the [*Tribunal Rules*](#).

[9] On May 27, 2021 the Agency replied to Mr. Acheampong via email explaining how a deferred payment plan is not possible.

[10] On June 6, 2021, the Tribunal unsuccessfully attempted to call Mr. Acheampong to receive information regarding the desired manner of proceeding seeing as he had not as of yet complied with rules 13 and 31 of the [Tribunal Rules](#).

[11] On June 25, 2021, the Tribunal received another request for deferred payment sent by Mr. Acheampong via XpressPost.

3. ISSUE

[12] Does Mr. Acheampong 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

[13] 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 Mr. Acheampong an opportunity to have a Minister's decision reviewed by the Tribunal if he first elected for a Ministerial review. In this case, he has elected to proceed by way of direct review by the Tribunal.

[14] 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](#).

[15] Subsections 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 before the Tribunal:

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.

[16] Additionally, subsection 14(3) of the [AAAMP Regulations](#) sets out how and when the request for review must be sent by registered mail following an electronic transmission:

(3) If a request is sent by fax or other electronic means, a copy of the request shall be sent either by courier or registered mail within 48 hours after the time limit for making the request.

[17] On May 7, 2021, Mr. Acheampong sent his request for review by email. Because it was sent electronically, he had an obligation to send a copy by registered mail by no later than May 29, 2021, pursuant subsection 14(3) [AAAMP Regulations](#). On June 25, 2021, well beyond the imposed time limit, the Tribunal received Mr. Acheampong's request for review by registered mail. As he failed to send it within the prescribed time limit, there is no valid request for review before the Tribunal.

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

5. ORDER

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

[20] Finally, I wish to inform Mr. Acheampong that this violation is not a criminal offence. After five years, he 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 26th day of July 2021.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal