



Citation: *Lee v Canada Border Services Agency*, 2021 CART 24

Dockets: CART-2021-BNOV-001

BETWEEN:

CHOONG HUN LEE

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Choong hun Lee representing himself; and
Mr. Jonathan Ledoux-Cloutier representing the Respondent**

DECISION DATE: September 3, 2021

1. INTRODUCTION

[1] This matter concerns the request for review of Notice of Violation (Notice) #8212-21-0013 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. Lee 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 January 7, 2021, Mr. Lee was served with this Notice upon his arrival at the Vancouver International Airport in British Columbia, for importing chicken rice porridge, which was 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. Lee’s request for review is inadmissible on the basis that he has paid the amount of the penalty imposed. Therefore, he is deemed to have committed the violation in accordance with section 9 of the [*AAAMP Act*](#).

2. BACKGROUND

[5] On January 11, 2021, Mr. Lee filed via email a request for review of the Notice, explaining that he will be unable to send a copy by registered mail within 14 days as he was required to quarantine due to the COVID-19 traveller guidelines.

[6] On January 12, 2021, the Tribunal sent a letter granting to Mr. Lee an extension to file the request by registered mail before February 8, 2021, in light of his exceptional circumstances.

[7] On January 28, 2021, Mr. Lee made the Tribunal aware that he intends to pay the reduced amount of the monetary penalty at \$650.

[8] On February 12, 2021, the Canada Border Services Agency (Agency) confirmed to the Tribunal that Mr. Lee did in fact pay the amount of the penalty.

3. ISSUE

[9] Does the Applicant 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; 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 Notice can be reviewed either by the Minister or by the Tribunal. The legislation further provides Mr. Lee 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.

[12] However, in order to avoid the Tribunal and the respective parties unnecessarily expanding 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 Notice has been paid.

[14] In this case, Mr. Lee has paid the reduced penalty stipulated on the Notice. The section of the Notice where Mr. Lee 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 Notice when the penalty or lesser amount has been paid. Mr. Lee is deemed to have committed the violation pursuant to subsection 9(1) of the [AAAMP Act](#).

[16] Given my findings regarding 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. Lee 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 3rd day of September 2021.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal