



Dockets: CART -1963

C.I. HISHON TRANSPORT INC.

APPLICANT

- AND -

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. William James Weir representing the Applicant; and
Ms. Haniya B. Sheikh representing the Respondent**

ORDER DATE: February 5, 2020

In the matter of the Applicant's request for review, made pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), of a violation of subsection 140(2) of the [Health of Animals Regulations](#), as alleged by the Respondent.

ORDER ARISING FROM THE APPLICANT'S CORRESPONDANCE DATED FEBRUARY 3, 2020, REGARDING MR. LAVERTY'S UNAVAILIBITY TO TESTIFY AT THE HEARING

1. BACKGROUND TO THE CURRENT ORDER

[1] On February 3, 2020, Mr. Weir sent an email to the Canada Agricultural Review Tribunal (Tribunal) to inform Chairperson Bélanger that Mr. Clayton Laverty's current employer did not grant him time away from his job to attend the hearing next week, scheduled on February 12 and 13, 2020. Mr. Weir also requested further guidance on how to proceed in order to still have Mr. Laverty's testimony be presented before the Tribunal.

[2] Mr. Weir stated in his email dated February 3, 2020, that Mr. Laverty has not been an employee of C.I. Hishon Transport Inc. (Hishon Transport) for a few years, which explains why he just obtained this information over the weekend following the issuance of the order dated January 30, 2020. Mr. Weir also apologized for the late notice.

[3] On February 4, 2020, following Mr. Weir's email, the Canadian Food Inspection Agency (Agency) sent a reply via email to the Tribunal and suggested the approach that Mr. Weir request the Tribunal issue a summons in order to secure Mr. Laverty's attendance, which would allow him to appear at the hearing on February 13, 2020.

[4] This option is available since the Tribunal, as court of record, has the authority to issue a summons requiring a person to appear before it pursuant to section 41 of the [*Agriculture and Agri-Food Administrative Monetary Penalties Act*](#).

[5] Additionally, the Agency submitted that the Tribunal, from its understanding, may only in "exceptional circumstances" conduct a hearing, in whole or in part, by videoconference, in accordance with [*Practice Note #15*](#). In its opinion, this exception does not appear to be applicable to the case at bar.

[6] As a result, on February 4, 2020, the Tribunal sent an email to Mr. Weir in order to inform him that Chairperson Bélanger will issue a summons and thereby required Mr. Laverty's contact details.

[7] On February 4, 2020, the same day, Mr. Weir sent an email to Tribunal requesting that the Registry contact him over the phone. Following a short conversation, Mr. Weir sent an email to the Tribunal to confirm in writing what was discussed over the phone. Mr. Weir confirmed that Mr. Laverty is not in the country and will not return until February 14, 2020. Mr. Weir also suggested an alternative option, which is to have Mr. Laverty testify via videoconference or other means on February 13, 2020.

[8] On February 4, 2020, the Agency, as a reply, sent an email expressing its disappointment with respect to Mr. Laverty's unviability to attend the hearing, when the date has been known to all parties for months. However, the Agency has decided to not object to Mr. Laverty participating by videoconference, should the Tribunal rule accordingly. Additionally, the Agency submits its objection to having a key witness being examined by telephone as the Agency may be unduly prejudiced by this method without being afforded the opportunity to see the witness and view body language and so forth.

2. CONSIDERATIONS

[9] Any person seeking a review by the Tribunal of an Agency's Notice of Violation or a Minister's Decision may request an oral hearing pursuant to section 15 [*Agriculture and Agri-Food Administrative Monetary Penalties Regulations*](#). The hearing is intended to assist the Tribunal in deciding the review by providing parties an opportunity to make oral submissions to supplement any written submissions. It also provides parties the opportunity to introduce evidence through the testimony of witnesses.

[10] According to [*Practice Note #15*](#), the Tribunal will only allow in exceptional circumstances that parties present their evidence by audioconference or videoconference. This has been a common practice of the Tribunal due to the complications that may arise when using an audioconference or videoconference services.

[11] Additionally, organizing a videoconference may be an onerous responsibility on both parties and the Tribunal. Indeed, if the Tribunal decides that audioconference or videoconference evidence for a specified witness will be permitted, the party leading will need to confirm the availability of the required technology, to the best of its ability verify its functionality in advance, as well send the Tribunal physical and electronic contact details to be used.

[12] With regards to the Agency's objection to present Mr. Laverty's testimony via teleconference may be prejudicial to the opposite party, I will admit this objection. Moreover, before Mr. Laverty testifies, I must namely verify his identity, which can be difficult due to the nature of the teleconference service.

[13] I considered the option of presenting Mr. Laverty's testimony via affidavit. However, pursuant to rule 21(2) of the [*Tribunal Rules*](#), Mr. Laverty had to make himself available at the hearing to allow his cross-examination by the Agency. Alternatively, his examination could have been dealt as an out of court examination by affidavit pursuant rule 99 of the [*Federal Courts Rules*](#).

[14] Accordingly, I find proceeding by out of court examination may result as a lengthy process and perhaps complex procedure for a self-represented litigant, and thereby be prejudicial to Mr. Weir.

3. ORDERS

[15] After reviewing both parties' submissions, I **ORDER** that Mr. Lavery's testimony be presented via videoconference at an ulterior date following the hearing scheduled in this matter.

[16] For purpose of fairness and efficiency, I will determine the time and date of the testimony as a preliminary question at the beginning of the hearing on **February 12, 2020**.

[17] Furthermore, I wish to remind the parties that the Tribunal is not responsible for any costs or helpline services associated with videoconference services, which parties were permitted to use in lieu of having their witnesses attend a hearing.

Dated at Ottawa, Ontario, on this 5th day of February 2020.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal