



Citation: *Kanyo v Minister of Public Safety and Emergency Preparedness*, 2021 CART 33

Docket: CART-2156

BETWEEN:

STEPHEN KANYO

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Patricia L. Farnese, member

WITH: Mr. Stephen Kanyo, representing himself; and
Mr. Kristian Turenne, representing the Respondent

DECISION DATE: November 18, 2021

VIRTUAL HEARING DATE: October 27, 2021

1. INTRODUCTION

[1] Mr. Kanyo requests that the Canada Agricultural Review Tribunal (Tribunal) set aside or vary the Minister's decision to uphold a Notice of Violation (Notice) and the accompanying \$1300 penalty he received for failing to declare pork slices when he entered Canada on a flight from the Netherlands. I find that Mr. Kanyo did fail to declare the pork slices contrary to section 16(1) of the [Health of Animals Act](#) (HA Act). The Notice with \$1300 penalty is upheld.

[2] This decision arises from my review of the Minister's decision #19-1420 confirming Notice #7023-19-0186. As mandated in subsection 13(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act), I have completed a *de novo* examination of the facts, meaning I have drawn my own factual and legal conclusions about the validity of the Notice following an oral hearing held on October 27, 2021.

2. LEGAL FRAMEWORK

[3] Subsection 12(1) of the [Customs Act](#) requires that travellers declare to an authorized customs officer all goods they are bringing into Canada. The custom's declaration must be made at the first opportunity after arriving in Canada. For those entering the country by air, this declaration typically occurs on the CBSA E311 Declaration Card or kiosk. The timing of declaration is important because those entering Canada are not permitted to gamble and wait to see if they are sent to secondary screening with an Officer before choosing to declare.¹

[4] While failing to declare is an offence under the [Customs Act](#), a person who fails to accurately declare animal by-products may receive a Notice for violating the [Health of Animals Act](#) (HA Act) or the [Health of Animals Regulations](#) (HA Regulations). The [HA Act](#) and [HA Regulations](#) work together to prevent the introduction of animal diseases into Canada.

[5] The [HA Act](#) and the [HA Regulations](#) are enforced through the uniform enforcement process prescribed by the [AAAMP Act](#) and the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations). The Agency must prove the essential elements of the violation on a balance of probabilities. The [AAAMP Act](#) is an absolute liability regime. There are almost no defences or legal reason to excuse someone of liability once the violation has been proven.

[6] The essential elements of a section 16(1) of the [HA Act](#) that must be proven by the Agency are:²

1. Mr. Kanyo is the person identified in the Notice;
2. Mr. Kanyo imported an animal product or by-product into Canada;

¹ [Canada \(AG\) v Savoie-Forgeot, 2014 FCA 26](#) at para 25.

² [Seyfollah v. Minister of Public Safety and Emergency Preparedness, 2021 CART 28](#).

3. Mr. Kanyo failed to declare the animal product or animal by-product at first contact with the Agency's officers and thus did not make it available for inspection; and,
4. none of the exceptions listed in Part IV of the [HA Regulations](#) applied at the time the Notice with penalty was issued.

[7] A person can contest a Notice by requesting a review of the facts of the violation by the Minister. The Minister's decision can be subsequently reviewed by the Tribunal. Subsection 14(1) of the [AAAMP Act](#) authorizes the Tribunal to confirm, vary, or set aside the Minister's decision after deciding whether the applicant committed the violation. In cases where the violation is confirmed, the Tribunal will also consider whether the penalty imposed follows the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#).

3. ISSUES

[8] Elements 1, 2, and 3 were conceded by Mr. Kanyo in the *Agreed Statement of Facts*. Mr. Kanyo does not dispute that he imported pork slices into Canada and failed to declare those slices to Agency officers at his first opportunity. The following issues remain:

Issue #1: Was an exception listed in Part IV of the [HA Regulations](#) applicable when the Notice with penalty was issued?

Issue #2: Did Mr. Kanyo raise a permissible defence?

Issue #3: Was the penalty imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#)?

4. ANALYSIS

I. Issue #1: Was an exception listed in Part IV of the [HA Regulations](#) applicable when the Notice with penalty was issued?

[9] The Agency has established that no exceptions were applicable to pork slices that would have permitted Mr. Kanyo to import the pork slices. Section 52 of the [HA Regulations](#) allows a person to import an animal by-product in two circumstances. The animal by-product can be imported if the person receives a permit from the Minister authorizing the import. A person is also able to provide documentation to the border official that explains the details of the by-products' treatment. The official has the discretion to permit the by-product's entry if the documentation provides reasonable assurances that the by-product does not pose a risk of introducing or spreading a vector, disease, or toxic substance into Canada.

[10] There is no record, either in the Border Security Officer's (BSO) notes or in Mr. Kanyo's testimony, that Mr. Kanyo produced a permit from the Minister or other documentation about the pork slice's treatment. Mr. Kanyo did not dispute that he did not declare that he was carrying pork slices on the Declaration Card. He also admitted that he initially failed to present the pork slices for inspection. The BSO's notes outlined that once the pork slices were discovered by the baggage inspecting dog. Mr. Kanyo stated he consumed the pork slices while waiting in secondary inspection although he later presented the pork slices to the BSO when pressed to produce their empty packaging. If he had a permit or other documentation, it is reasonable to conclude that Mr. Kanyo would have presented them during this exchange. The Agency has proven the final essential element of the violation.

II. Issue #2: Did Mr. Kanyo raise a permissible defence?

[11] Mr. Kanyo did not raise a permissible defence that would excuse him from liability for failing to declare the pork slices. In his submissions to the Tribunal, Mr. Kanyo explained that he believes that small quantities of animal by-products, processed as pork slices, imported for personal consumption are not captured by section 16 of the [HA Act](#). He is mistaken. Section 18 of the [AAAMP Act](#) explicitly excludes mistake of fact as a defence even where the mistake was reasonably and honestly made.

[12] Even if I were permitted to accept the defence of mistake of fact, I do not accept that Mr. Kanyo was mistaken as to his obligation to report the pork slices. His decision to pretend that he had consumed the products is not consistent with what one would anticipate from someone who believed they had a lawful right to import the product. His explanation that the declaration card was unclear and that caused him not to declare the pork slices likewise does not have an air of truth. These explanations were contrived to explain conduct after the fact and not an accurate reflection of what his beliefs were at the time.

III. Issue #3: Was the penalty imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#)?

[13] I find that the \$1300 penalty issued to Mr. Kanyo was imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#). Section 5(1) of the [AAAMP Regulations](#) mandates a \$1300 penalty for violations which are categorized by the [AAAMP Regulations](#) as very serious. Violations of section 16(1) of the [HA Act](#) are categorized as very serious in Schedule 1 of the [HA Regulations](#).

[14] While the BSO has discretion whether to issue a Notice with a warning rather than a penalty, the evidentiary record demonstrates that his discretion was reasonably exercised. The BSO explained to Mr. Kanyo when he issued the Notice with penalty that pork slices from Germany have the potential to spread African Swine Fever. The BSO's notes also indicate that Mr. Kanyo's dishonest conduct was an aggravating factor that justified a penalty rather than a warning.

[15] Having determined that the essential elements of a violation of section 16(1) of the [HA Act](#) have been established and that the penalty imposed complied with the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#), I find that the Notice issued to Mr. Kanyo with the \$1300 penalty is lawful and justified.

5. ORDER

[16] I confirm the Minister's finding that Mr. Stephen Kanyo committed the violation in the Notice and must pay the penalty of \$1300 to the Agency within 60 days after the date this decision is issued.

[17] I wish to inform Mr. Kanyo that this violation is not a criminal offence. Five years after the date on which the penalty is paid, he is entitled to apply to the Minister of Public Safety and Emergency Preparedness to have the violation removed from their records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Saskatoon, Saskatchewan, on this 18th day of November, 2021.

(Original Signed)

Patricia L. Farnese
Member
Canada Agricultural Review Tribunal