



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Waito Bros. Inc. v Canadian Food Inspection Agency*, 2022 CART 05

Docket: CART-2132

BETWEEN:

WAITO BROS. INC.

APPLICANT

-AND-

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

BEEFORE: Marthanne Robson, Member

WITH: Mr. Richard Waito, representing the Applicant, and
Ms. Samantha Pillon, representing the Respondent

DECISION DATE: March 21, 2022

HEARING DATE: October 21, 2021

1. OVERVIEW

[1] Mr. Richard Waito, president of Waito Bros. Inc. loaded 55 animals, including two rams onto his trailer. He transported them to a sales barn and unloaded them. A Canadian Food Inspection Agency (Agency) Inspector/veterinarian conducting a routine trace (tag) inspection noticed that one of the rams did not bear an approved tag. At the inspector's request, an employee of the sales barn applied a tag within about an hour of unloading. The Agency issued a Notice of Violation (Notice) with penalty of \$1300 for transporting an animal not bearing an approved tag contrary to subsection 177(1) of the [Health of Animals Regulations](#)¹ (*HA Regulations*). Mr. Waito requested that the Canada Agricultural Review Tribunal (Tribunal) review the facts of the violation.

[2] The only issue in this case is whether Waito Bros. Inc. raised a permissible defense. They did not. Mr. Waito admitted during the hearing that the ram did not have an approved tag. He assumed that because he had bought the ram at another sale, it had an approved tag. He argued it was a simple mistake. He testified that he sees about a thousand sheep a week and if he had known the ram did not have an approved tag, he would have applied one. The governing legislation explicitly excludes due diligence (I did my best) and mistake of fact (I was mistaken) as defences. Waito Bros. Inc. committed the violation and must pay the penalty.

¹ [Health of Animals Regulations, C.R.C., c 296](#) [*HA Regulation*].

2. LEGAL FRAMEWORK

[3] The [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)² (AAAMP Act) and [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#)³ (AAAMP Regulations) establish a regime of violations and penalties enforced by the Agency to safeguard Canada's agri-food system. Violations under this regime are absolute liability offences, meaning that if a person carries out the prohibited act, in this case, transporting a ram without an approved tag, there are very few permissible defences. The [AAAMP Act](#) explicitly excludes the defences of due diligence (I did my best) and mistake of fact (I was mistaken).⁴ The Federal Court of Appeal in the [Doyon](#) decision described this system of violations and penalties as draconian and highly punitive.⁵

[4] The [HA Regulations](#) require owners and transporters, among others, to tag animals throughout the production chain. They may face liability when a tag is missing. Approved tags allow the Agency to rapidly respond to serious animal diseases and food safety issues by tracing animals from the identification of a problem, for example at a sales barn or an abattoir, back to the farm.

[5] Subsection 177 (1) of the [HA Regulations](#) reads:

Subject to section 183 and subsection 184(2), no person shall transport or cause the transportation of a bison, bovine or ovine or the carcass of a bison, bovine or ovine that does not bear an approved tag.

² [Agriculture and Agri-Food Administrative Monetary Penalties Act, SC 1995, c 40](#) [AAAMP Act].

³ [Agriculture and Agri-Food Administrative Monetary Penalties Regulations, SOR/2000-187](#) [AAAMP Regulations].

⁴ [AAAMP Act](#), *supra* note 2, s 18(1).

⁵ [Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152 at para 21.

- [6] The essential elements of a violation of subsection 177 (1) of the [HA Regulations](#) are:
1. Waito Bros. Inc. is the business or person identified in the Notice;
 2. Waito Bros. Inc. transported or caused the transportation of a bison, bovine or ovine (sheep); and
 3. The animal did not bear an approved tag while transported.

[7] Subsection 177 (1) of the [HA Regulations](#) specifies two exceptions to the violation. Section 183 of the [HA Regulations](#) applies only to a bison or bovine, not an ovine, transported from its farm of origin without an approved tag for the purposes of applying one. Under subsection 184(2) of the [HA Regulations](#), if an animal begins its journey with an approved tag and loses it while transported, there is no violation of subsection 177(1) if a new tag is applied immediately after it is received at the next site it reaches.

[8] The Agency must prove on the balance of probabilities all the essential elements of the violation. If all the elements are proven, and no statutory exceptions apply that relieve responsibility for the violation, the Tribunal considers whether the applicant raised a permissible defence. If the applicant does not establish a permissible defence, the Tribunal considers whether the penalty imposed follows the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#).

3. ISSUES

[9] No essential elements of the violation are in dispute, nor is the determination of the amount of penalty.

[10] Issue 1: Does the exception in section 184(2) of the [HA Regulations](#), a tag lost during transportation was replaced with a new one immediately after unloading, apply in this case?

[11] Issue 2: Did Waito Bros. Inc. raise a permissible defence?

- a) Is mistaking a non-approved tag for an approved tag a defence?
- b) Is failing to notice one missing tag when Mr. Waito sees about a thousand sheep a week a defence?
- c) Is it a defence to claim that an absolute liability regime is unfair?

[12] Issue 3: Was the penalty assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#)?

4. ANALYSIS

[13] Mr. Richard Waito is president of Waito Bros. Inc. He admitted he transported the ram. During the hearing, he admitted the ram did not have an approved tag. His admissions prove that Waito Bros. Inc. committed all the essential elements of the violation.

Issue 1. Does the exception in section 184(2) of the *HA Regulations*, a tag lost during transportation was replaced with a new one immediately after unloading, apply in this case?

[14] Under subsection 184(2) of the [HA Regulations](#), there is no violation of subsection 177(1) of the [HA Regulations](#) if an animal loses its approved tag while transported and a new approved tag is applied immediately after it is unloaded. The animal must have a tag at the beginning of the journey for this exception to apply.⁶ However, there is no evidence in this case that the ram had an approved tag at the beginning of the journey.

⁶ See for example, [Morningstar v. Canada \(Canadian Food Inspection Agency\), 2010 CART 2](#) at para 29.

[15] Agency inspector Dr. Ivanovich testified that the tags in the ram's ears were not approved mandatory identifier tags, but rather farm management tags. There were no holes, tears or blood in either ear of the ram indicating that any other tag had been applied and lost. Photographs submitted by the Agency confirmed that testimony.

[16] Mr. Waito submitted no evidence that the ram had an approved tag at the beginning of the journey. The Tribunal concludes that on a balance of probabilities, the ram did not have an approved tag at the beginning of the journey which was lost during transportation. Therefore, the violation of subsection 177 (1) of the [HA Regulations](#) could not be remedied by applying a new tag after unloading. The exception in subsection 184(2) of the [HA Regulations](#) does not apply.

Issue 2. Did Waito Bros. Inc. raise a permissible defence?

a) Is mistaking a non-approved tag for an approved tag a defence?

[17] Dr. Ivanovich observed that the ram had two tags, one yellow, one blue. Mr. Waito considered the yellow tag to be very similar to the approved tag. Dr. Ivanovich testified that the yellow tag in the ram's ear did not look remotely like any national trace tag for sheep and that the approved trace tag is very definable. The approved tag can be either a round button tag or a wraparound tag, and most are bright yellow. There is a clearly visible 15-digit number on the approved tag. The number on both the blue and yellow tags on the ram was "200". No photo or image of an approved tag was submitted in evidence. The Tribunal accepts the evidence of Dr. Ivanovich that the yellow tag in the ram's ear was not an approved tag.

[18] Mr. Waito argued it was a mistake, not a violation. He assumed the ram had the approved tag when he bought it. He argued that the yellow tag that was in the ram's ear looked very similar to the approved tag.

[19] Paragraph 18(1)(b) of the [AAAMP Act](#) explicitly excludes a reasonably and honestly held belief in the existence of facts as a defence to a violation under the [HA Regulations](#). A mistaken belief that the ram had an approved tag is not a defence.

b) Is failing to notice one missing tag when Mr. Waito sees about a thousand sheep a week a defence?

[20] Mr. Waito testified that he sees about a thousand sheep a week. He looks at the body condition and the amount of wool on the sheep. As noted, he believed the yellow tag on the ram was very similar to an approved tag.

[21] Paragraph 18(1)(a) of the [AAAMP Act](#) explicitly excludes due diligence as a defence to a violation. Mr. Waito argued that he did his best in the circumstances, in essence, that he exercised due diligence in transporting the ram and that missing one tag among 1000 sheep a week should not be violation. Failing to notice only one missing tag is not a defence to the violation.

c) Is it a defence to claim that an absolute liability regime is unfair?

[22] Mr. Waito also argued that traceability has nothing to do with the tag, noting that when sheep arrive at an abattoir, the head is cut off and discarded right away. The tag is not recorded. However, in this case, Mr. Waito did not deliver the ram to an abattoir, he delivered it to a sales barn. A sheep that it loses its tag on the way to an abattoir does not need a new tag applied if it is slaughtered there and the operator has enough information to trace the origin of the animal.⁷ That regulation does not exclude the requirement to have an approved tag, only the requirement to reapply a tag when one is lost in transport.

⁷[HA Regulations](#), *supra* note 1, s 184(3).

[23] As the Tribunal wrote in [HS Knill](#),⁸ perceived unfairness in an absolute liability regime should be addressed through advocacy for legislative change:

“[...] the Regulations do impose a heavy, and at times, superhuman burden on a transporter to verify the continuing and constant presence of an approved tag in the ear of each of the animals being transported, failing which, the transporter faces liability for regulatory non-compliance[...] Fair or not, this is, however the regulatory burden that Parliament and the Governor in Council have placed on, in this case, the applicant Knill, and the Tribunal must interpret and apply the law to the facts of this case.”⁹

[24] In this case, the heavy burden placed on transporters of animals by the [AAAMP Regulations](#), even if it is perceived as unfair by Mr. Waito, is not a defence to the violation.

Issue 3. Was the penalty assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#)?

[25] The [AAAMP Act](#) and [AAAMP Regulations](#) establish a system of administrative monetary penalties (fines) or warnings as a fair and efficient alternative to criminal charges to enforce agri-food legislation, such as the [HA Regulations](#). The [AAAMP Act](#) grants the Agency the discretion to issue a Notice with penalty or with warning.

[26] Subsection 177(1) of the [HA Regulations](#) is classified as a “minor” violation¹⁰. The penalty for a minor violation committed by an individual in the course of a business or to obtain a financial benefit is fixed at \$1300.¹¹

[27] Mr. Waito requested that the Tribunal waive the penalty. He submitted that he had no prior conviction and the penalty was out of proportion to the value of the product.

⁸ [HS Knill Company Limited v. Canada \(Canadian Food Inspection Agency\)](#), 2011 CART 15.

⁹ [Ibid](#) at para 39.

¹⁰ [AAAMP Regulations](#), *supra* note 3, Schedule 1, Part 1, Division 2.

¹¹ [Ibid](#) s 5(2).

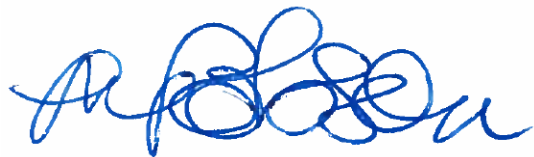
[28] The [AAAMP Act](#) does not expressly grant the Tribunal the authority to change a Notice with penalty to one with warning, to reduce or waive the penalty or to forgive the violation. Mr. Waito did not submit any legal reasons explaining how the Tribunal might have the authority to vary or waive the penalty. The Tribunal has concluded that it cannot vary or waive the penalty based on circumstantial, humanitarian or financial grounds.¹² The penalty was assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#).

5. ORDER

[29] The Tribunal concludes that Waito Bros Inc. committed the violation in Notice #1819ON4034 dated June 3, 2019, contrary to paragraph 177(1) of the [HA Regulations](#). Waito Bros Inc. must pay the penalty of \$1300 to the Agency within forty-five (45) days after the day on which Waito Bros Inc. receives notice of this decision.

[30] This violation is not a criminal offence. Five years after the date on which the penalty is paid, Waito Bros Inc. has the right to apply to the Minister of Agriculture and Agri-Food to have the violation removed from the records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Ottawa, Ontario on this 21st day of March 2022.



Marthanne Robson
Member
Canada Agricultural Review Tribunal

¹² [Li v. Canada \(Minister of Public Safety and Emergency Preparedness\), 2016 CART 11.](#)