



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Djaibe v Canada Border Services Agency*, 2022 CART 11

Docket: CART-2022-BNOV-008

BETWEEN:

NGATIRÉ DJAIBE

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

[Translation of the official French version]

BEFORE: Luc Bélanger, Chairperson

WITH: Ms. Ngatiré Djaibe, representing herself; and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent

DECISION DATE: May 5, 2022

1. INTRODUCTION

[1] This matter concerns the request for review of Notice of Violation (Notice) # 3961-22-0074 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 assess whether or not Ms. Djaibe 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 January 17, 2022, Ms. Djaibe was served with this Notice at the Montréal Pierre-Elliott-Trudeau International Airport for having allegedly failed to present pork sausages she had in her possession upon entering the country. In doing so, she contravened subsection 16(1) of the [*Health of Animals Act*](#) (HA Act). Since this violation is classified as “Very Serious”, the Notice was served with a \$1,300 monetary penalty.

[4] For the following reasons, in accordance with rule 32 of the [*Tribunal Rules*](#), I find Ms. Djaibe’s request for review to be inadmissible since a copy of the request was not sent by registered mail within the time limit prescribed by subsection 11(2) of the [*AAAMP Regulations*](#). Therefore, Ms. Djaibe is deemed to have committed the violation in accordance with section 9 of the [*AAAMP Act*](#).

2. BACKGROUND

[5] On April 14, 2022, the Canada Agricultural Review Tribunal (Tribunal) received a request for review of the Notice and a request for extension of time via email. The request contained Ms. Djaibe's written submissions and an electronic copy of the Food, Plants and Animals (FPA) Interception Receipt issued by the Canada Border Services Agency (Agency).

[6] On April 14, 2022, the Tribunal sent a first acknowledgement letter to both parties requesting that they comply with rules 30 and 31 of the [Tribunal Rules](#) on or before April 25, 2022. Additionally, Ms. Djaibe was urged to comply with rule 13 of the [Tribunal Rules](#) before April 25, 2022, by sending a copy of her request via registered mail to the Tribunal so that the Tribunal could consider whether it was admissible.

[7] On April 25, 2022, the Agency complied with rule 30 of the [Tribunal Rules](#) by filing a copy of the Notice with the Tribunal via email and confirming that the amount stated in the Notice remained unpaid.

[8] On April 25, 2022, the Tribunal received an email from Ms. Djaibe containing a scan of the Notice.

3. ISSUE

[9] Does Ms. Djaibe 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. not having paid the penalty associated with the notice of violation, if there is one;
and
3. providing the required information and reasons for the request for review in accordance with the [Tribunal Rules](#).

4. ANALYSIS

[10] The legislative scheme encompassed in the [AAAMP Act](#) provides for a review mechanism whereby a Notice can be reviewed either by the Minister or by the Tribunal. In this case, Ms. Djaibe has elected to proceed by way of direct review by the Tribunal.

[11] The [AAAMP Act](#), the [AAAMP Regulations](#) and the [Tribunal Rules](#) require the Tribunal to make a decision on the admissibility of an applicant's request for review before proceeding with a full hearing of the matter. 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](#).

[12] Subsection 11(2) of the [AAAMP Regulations](#) outlines the required statutory period for the filing of a request for review before the Tribunal. A request for review must be filed within 30 days after the day on which the Notice was served. In this case, Ms. Djaibe had to file her request no later than February 16, 2022.

[13] On April 14, 2022, Ms. Djaibe filed her request for review and request for extension of time with the Tribunal. The Tribunal has no jurisdiction to grant an extension of time in this case, as confirmed by the Federal Court of Appeal in [Clare](#)¹ at paragraph 24:

The jurisprudence of this Court has determined that the Tribunal does not have the jurisdiction to deviate from the timelines set out in the AAAMP legislation: *Reference re section 14 of the Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, 2012 FCA 130, *Adam v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17164 (FCA), [2001] 1 F.C. 373 (C.A.), *Wilbur-Ellis Co. of Canada v. Canada (Deputy Minister of National Revenue, Customs and Excise – M.N.R.)*, 1995 CanLII 11058 (FCA), [1995] F.C.J. No. 1435 (C.A.). Thus the Tribunal was correct in deciding that it did not have the jurisdiction to provide relief to soften the strict application of the provisions found in the AAAMP Act and AAAMP Regulations.

[14] Since Ms. Djaibe failed to send her request for review in the prescribed time and manner, the Tribunal must find the request for review to be inadmissible.

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

¹ [Clare v. Canada \(Attorney General\)](#), 2013 FCA 265.

5. ORDER

[16] For the above-mentioned reasons, I **ORDER** that the request for review is **inadmissible**.

[17] Finally, I wish to inform Ms. Djaibe that this violation is not a criminal offence. After five years, she 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, of this 5th day of May 2022.

[Original signed]

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal