



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Irakoze v Canada Border Services Agency*, 2022 CART 12

Docket: CART-2162

ALINE IRAKOZE

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

[Translation of the official French version]

BEFORE: Geneviève Parent, Member

WITH: Mr. Jessy Ishimwe, representing the Applicant; and
Mr. Kristian Turenne, representing the Respondent

DECISION DATE: May 17, 2022

In the matter of a request to the Canada Agricultural Review Tribunal under paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act) for a review of Notice of Violation No. 3961-20-0094 alleging that the Applicant violated subsection 16(1) of the [Health of Animals Act](#) (HA Act).

BY WRITTEN SUBMISSIONS ONLY

1. INTRODUCTION

[1] This decision was made on the basis of the file. It concerns a request submitted by Ms. Irakoze to the Canadian Agricultural Review Tribunal (Tribunal) for a review of Notice of Violation No. 3961-20-0094, in accordance with paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] Notice of Violation No. 3961-20-0094 issued by the Canada Border Services Agency (Agency) alleges that the applicant failed to declare an animal product or by-product, namely 2.88 kg of pork and/or beef sausages (31 sausages), upon her arrival in Canada on or about January 10, 2020, after a stay in Rwanda, thereby violating subsection 16(1) of the [Health of Animals Act](#) (HA Act).

[3] After reviewing the facts, and on a balance of probabilities, I find that Ms. Irakoze committed the alleged violation and that the \$1,300 monetary penalty imposed was established in accordance with the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations).

2. PROCEDURAL HISTORY

[4] Ms. Irakoze notified the Tribunal that she was being represented by Mr. Jessy Ishimwe.

[5] Despite repeated requests made by the Tribunal, Ms. Irakoze failed to provide an answer to the Tribunal as to whether she wished to proceed by means of written submissions or an in-person hearing, while the Agency, for its part, indicated its preference for the Tribunal to render a decision based on the file.

[6] Having consulted with the parties as to their availability, the Tribunal scheduled a mandatory case management conference (CMC) for November 15, 2021, at 10:00 a.m.

[7] At the opening of the CMC at 10:00 a.m. on November 15, 2021, neither Ms. Irakoze nor her representative were present. The Tribunal adjourned the CMC after a 30-minute wait and several attempts to reach the applicant and her representative.

[8] In this context, the Tribunal issued an order on the same day directing Ms. Irakoze to inform the Tribunal of her decision to proceed by way of written submissions or an in-person hearing no later than 4:00 p.m. on November 22, 2021. If Ms. Irakoze or her representative failed to respond by the deadline, the Tribunal would render a decision based on the file in this matter.

[9] No written communication from Ms. Irakoze or her representative has been received at the Tribunal since then. A decision based on the file is therefore being rendered in this matter.

3. LEGAL FRAMEWORK

[10] Subsection 12(1) of the [Customs Act](#) requires all persons travelling in Canada to report all goods imported into Canada. Travellers have an obligation, either before or upon their arrival in Canada, to declare any animal by-products (such as pork and/or beef sausages) and to present them to an inspector, officer, or customs officer for inspection in accordance with subsection 16(1) of the [HA Act](#).¹

[11] The disclosure of goods and making them available for inspection should occur at the first contact with customs officials and not later. As has been pointed out in [Savoie-Forgeot](#), the timing of the disclosure is important, as travellers to Canada are not allowed to gamble on the chance that they will not be subject to a secondary inspection by a border services officer before deciding to declare the goods.²

¹ See [Canada \(Attorney General\) v. Savoie-Forgeot](#), 2014 FCA 26 at para 17.

² [Ibid](#) at para 25.

[12] For travellers entering the country by air, this declaration is usually made on the E311 pre-declaration card or at the Canada Border Services Agency (Agency) counter during the primary inspection by a Canada Border Services Officer (BSO).

[13] Persons who do not declare the animal by-product in their possession and make it available for inspection are in violation of the [HA Act](#) and the [Health of Animals Regulations](#) (HA Regulations).

[14] The essential elements of the violation of subsection 16(1) of the [HA Act](#) that must be proven on a balance of probabilities by the Agency are as follows:

1. Ms. Irakoze is the person identified in the Notice of Violation.
2. Ms. Irakoze imported an animal product or by-product into Canada.
3. Ms. Irakoze failed to declare the animal product or by-product at the first opportunity to a border services officer and therefore did not make it available for inspection.
4. None of the exceptions listed in Part IV of the [HA Regulations](#) applied at the time the Notice of Violation and penalty was issued.

[15] The Tribunal has jurisdiction to hear the request for review pursuant to paragraph 9(2)(c) of the [AAAMP Act](#). The Tribunal must therefore assess whether the Agency has established, on a balance of probabilities, the elements of a violation under subsection 16(1) of the [HA Act](#). If it has, the Tribunal must then assess whether the amount of the administrative monetary penalty of \$1,300 was established in accordance with the regulations and, if not, substitute the amount it considers appropriate.

4. ISSUES

[16] The Tribunal must respond to the following issues:

Issue 1: Has the Agency demonstrated, on a balance of probabilities, the elements of a violation of subsection 16(1) of the [HA Act](#)?

Issue 2: If so, did Ms. Irakoze raise a permissible defence?

Issue 3: If it is determined that no permissible defence was raised, was the administrative monetary penalty imposed in accordance with the [AAAMP Act](#) and the [AAAMP Regulations](#)?

5. ANALYSIS

Issue 1: Has the Agency demonstrated, on a balance of probabilities, the elements of a violation of subsection 16(1) of the [HA Act](#)?

[17] Having reviewed the evidence in the file, I find that the Agency has demonstrated that Ms. Irakoze committed the violation. Indeed, all the elements of a violation set out in subsection 16(1) of the [HA Act](#) have been established on a balance of probabilities:

1. Ms. Irakoze is the person identified in the Notice of Violation.
2. Ms. Irakoze imported an animal product or by-product into Canada.
3. Ms. Irakoze failed to declare the animal product or by-product and did not make it available for inspection.
4. None of the exceptions listed in Part IV of the [HA Regulations](#) apply.

1. Ms. Irakoze is the person identified in the Notice of Violation

[18] Ms. Irakoze's identity was confirmed by BSO Chaput at the primary inspection and by BSO Bonin at the secondary inspection, through the examination of her travel document, permanent resident card and boarding pass. The Agency produced copies of these documents which were used to confirm the identity of the applicant. Furthermore, Ms. Irakoze does not dispute that it was she who was given the Notice of Violation in question. The Agency has therefore established the first element of the violation, namely that Ms. Irakoze is the person identified in the Notice of Violation.

2. Ms. Irakoze imported an animal product or by-product into Canada

[19] Upon examination of Ms. Irakoze's luggage, BSO Bonin found 2.88 kg of pork and/or beef sausages (31 sausages), an animal by-product. When BSO Bonin asked Ms. Irakoze about the composition of the sausages, she initially said it was pork sausage. After BSO Bonin explained the dangers of African swine fever, Ms. Irakoze then said that they were beef sausages and finally said that they might contain pork and beef. However, the Automated Import Reference System (AIRS) confirmed that both pork and beef products and by-products originating in Rwanda must be refused entry into Canada.

[20] Ms. Irakoze does not dispute that the officer found 2.88 kg of meat sausages from Rwanda in her luggage. Thus, the Agency has established the second element of the violation, namely that Ms. Irakoze imported an animal product or by-product into Canada.

3. Ms. Irakoze failed to declare the animal product or by-product and did not make it available for inspection

[21] Under the current law, Ms. Irakoze was required to declare the animal product or by-product (pork and/or beef sausages) at the first opportunity upon entry into Canada and to make it available to a border services officer (BSO) for inspection.³

[22] The evidence shows that Ms. Irakoze did not use the primary inspection kiosks to complete her declaration beforehand. During the primary inspection conducted by BSO Chaput, she verbally declared to him that she had nothing to declare. He then gave her a BSF423 form and directed her to a secondary inspection.

[23] At the secondary inspection, Ms. Irakoze met with BSO Bonin and did not give him the BSF423 form, stating instead that she had thrown it in the garbage. BSO Bonin asked Ms. Irakoze to confirm that it was her luggage, that she was aware of its contents and that she had packed it herself. The applicant answered "yes" to all three questions. At this stage, Ms. Irakoze still failed to report the presence of any animal product or by-product (pork and/or beef sausages) in her luggage. BSO Bonin only discovered the sausages after conducting a search of Ms. Irakoze's four (4) suitcases and two (2) carry-on bags.

[24] By failing to complete a declaration card indicating that she was importing animal products or by-products, and by failing to declare the presence of meat sausages in her suitcases either during the primary inspection conducted by BSO Chaput or during the secondary inspection conducted by BSO Bonin, Ms. Irakoze failed to declare these products and did not make them available for inspection, as required by the applicable law. The third element of the violation has therefore been proven by the Agency on a balance of probabilities.

³ See [Canada \(Attorney General\) v. Savoie-Forgeot, 2014 FCA 26](#) at para 25.

4. None of the exceptions listed in Part IV of the [HA Regulations](#) apply

[25] Section 52 of the [HA Regulations](#) permits the importation of an animal by-product if (1) the importer has been issued a permit authorizing the import, or (2) the importer provides documentation detailing the treatment of the by-product. These exceptions do not apply in this case. BSO Bonin noted that when asked if she had a permit authorizing the importation of animal by-products, Ms. Irakoze replied "no" and no evidence to the contrary was submitted by Ms. Irakoze. The Agency has therefore proven the fourth element of the violation, namely that none of the exceptions listed in Part IV of the [HA Regulations](#) applied at the time the Notice of Violation was issued.

Issue 2: If Ms. Irakoze committed the violation, did she raise a permissible defence?

[26] Ms. Irakoze has not raised a permissible defence that would absolve her of liability for failing to declare the pork and/or beef shipments from Rwanda.

[27] In her submissions to the Tribunal, Ms. Irakoze explained that, because she did not have the luggage in her possession, she forgot to declare the sausage that was in her luggage. Ms. Irakoze contends that she was tired after 22 hours of flying with a small child and that she did not understand the questions that the officers were asking her. It should be noted that BSO Bonin's report confirms, however, that Ms. Irakoze did understand the questions asked and that there was no communication problem. She also maintains that she believed that the officer had asked her if she had any food on her person and not in her luggage. Finally, she states that she had [translation] "no reason to believe" that the food she was bringing into Canada was prohibited or that special measures were required in these circumstances.

[28] These arguments amount to an error of fact defence. However, subsection 18(1) of the [AAAMP Act](#) expressly excludes error of fact as a ground of defence in cases such as this, even if the Tribunal has no reason to doubt that it was a reasonable error made in good faith by Ms. Irakoze.⁴

Issue 3: Has the administrative monetary penalty been established pursuant to the [AAAMP Act](#) and the [AAAMP Regulations](#)?

[29] I find that the \$1,300 administrative monetary penalty imposed on Ms. Irakoze has been established pursuant to the [AAAMP Act](#) and the [AAAMP Regulations](#). Indeed, subsection 5(1) of the [AAAMP Regulations](#) provides for a penalty of \$1,300 for violations that the [AAAMP Regulations](#) classify as serious. Violations of subsection 16(1) of the [HA Act](#) are classified as “very serious” in Schedule 1 to the [AAAMP Regulations](#).

[30] In light of the foregoing, I am of the opinion that the Agency has proven, on a balance of probabilities, the elements of a violation of subsection 16(1) of the [HA Act](#), that Ms. Irakoze has not raised a permissible defence, and that the penalty was established pursuant to the [AAAMP Act](#) and the [AAAMP Regulations](#).

⁴ See [Usman v Canada Border Services Agency, 2021 CART 34](#) at para 14.

5. ORDER

[31] I find that Ms. Irakoze committed the violation set out in Notice of Violation No. 3961-20-0094, and I order that she pay the penalty of \$1,300.00 to the Agency within sixty (60) days from the date this decision is issued.

[32] I further advise Ms. Irakoze that this violation is not a criminal offence. Five years after the day on which the penalty is paid, she may apply to the Minister of the Public Safety and Emergency Preparedness to have the violation removed from her record, pursuant to section 23 of the [AAAMP Act](#).

[Original signed]

Geneviève Parent
Member
Canadian Agricultural Review Tribunal