



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Abd Al Shahed v Minister of Public Safety and Emergency Preparedness*, 2022
CART 14

Docket: CART-2021-BMR-035

BETWEEN:

MAGDY ABD AL SHAHED

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Patricia L. Farnese, member

WITH: Mr. Magdy Abd Al Shahed, representing himself; and
Ms. Gaynor Holden, representing the Respondent

DECISION DATE: May 26, 2022

HEARING BY WRITTEN SUBMISSIONS ONLY

1. INTRODUCTION

[1] Mr. Abd Al Shahed 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 pastrami when he entered Canada on a flight from Egypt. I find that Mr. Abd Al Shahed failed to declare an animal by-product contrary to subsection 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 #2102992-1 confirming Notice #4971-20-1269. As mandated in paragraph 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 after a review of written submissions provided by the parties.

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 customs 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 Primary Inspection Kiosk (PIK). 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 deciding to declare.¹

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

[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 [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. The [AAAMP Act](#) is an absolute liability regime. There are almost no defences or legal reasons to excuse someone of liability once the violation has been proven.

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

1. Mr. Abd Al Shahed is the person identified in the Notice;
2. Mr. Abd Al Shahed imported an animal, animal product or animal by-product, or animal food into Canada;
3. none of the exceptions listed in Part IV of the [HA Regulations](#) applied; and,
4. Mr. Abd Al Shahed did not declare the product in question at first contact with Agency officers and therefore did not make it available for inspection.

[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](#). The Tribunal has not been given the authority to reduce the amount of the penalty where the process has been followed.

² See [Santos v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2021 CART 17.

3. ISSUES

[8] To determine whether the Minister's decision to confirm the Notice was correct, the following issues will be considered:

Issue #1: Did Mr. Abd Al Shahed bring pastrami into Canada without declaring it?

Issue #2: Are capacity to pay and lack of previous violation permissible defences?

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

4. ANALYSIS

Issue #1: Did Mr. Abd Al Shahed bring pastrami into Canada without declaring it?

[9] The Agency has proven the first element of the violation. There is no doubt that Mr. Abd Al Shahed is the person who was sent to secondary inspection upon his arrival at the Pearson International Airport in Toronto, Ontario and received the Notice for failing to declare that he had imported pastrami. Mr. Abd Al Shahed identified that the bag where the meat was found was his bag prior to the Border Services Officer (Officer) opening the bag and discovering the pastrami. He also confirmed to the Officer that he packed his bags and was aware of their contents. The Officer also made photocopies of Mr. Abd Al Shahed's permanent residence card and Ontario driver's license when he was preparing the Notice. These copies have been provided to the Tribunal. Mr. Abd Al Shahed also has not disputed that he imported an animal by-product into Canada.

[10] The Agency has provided sufficient evidence to prove the second element of the violation – that Mr. Abd Al Shaded imported an animal by-product, namely pastrami, into Canada. The Officer's handwritten notes taken while he was inspecting Mr. Abd Al Shahed's luggage as well as the report the Officer prepared shortly thereafter indicate that a meat product was found in a bag that also held cheese. The notes and report further document that Mr. Abd Al Shahed identified the meat product as pastrami. The Agency has also provided a copy of the FPA Interception Receipt completed by the Officer during his inspection of Mr. Abd Al Shahed's luggage that indicates that an animal product was found and that animal product was pastrami.

[11] The Agency has established the third element by outlining that no exceptions were applicable to pastrami that would have permitted Mr. Abd Al Shahed to import the meat. The Officer searched the Automated Import Reference System (AIRS) after he found the pastrami. AIRS states all meat, unless it is from the United State and is being imported for personal consumption, is to be refused entry. This meat was from Egypt.

[12] 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-product's 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. There is no evidence that Mr. Abd Al Shahed had a permit. The Officer did not record in his notes that Mr. Abd Al Shahed produced a permit from the Minister that would allow the pastrami's import. Likewise, Mr. Abd Al Shahed's letter requesting a review of the Minister's decision does not indicate he had such a permit.

[13] The Agency has also proven the final element of the offence by demonstrating that Mr. Abd Al Shahed did not declare the pastrami at his first opportunity. A copy of the E311 Declaration Mr. Abd Al Shahed completed when he arrived in Toronto was provided by the Agency. Mr. Abd Al Shahed selected 'No' next to the question asking if he brought meat into Canada. He was given a further opportunity to declare the pastrami when he first met the Officer in secondary inspection and was asked whether he was bringing any food into Canada. Mr. Abd Al Shahed answered that he had cheese. Mr. Abd Al Shahed again failed to declare the pastrami in addition to the ghee, nuts, and garlic he also packed in his bags. The Officer's notes indicate that Mr. Abd Al Shahed appeared to be attempting to hide the pastrami and only admitted he had the meat after it was discovered.

Issue #2: Are capacity to pay and lack of previous violation permissible defences?

[14] Mr. Abd Al Shahed did not raise a permissible defence that would excuse him from liability for failing to declare pastrami. In his submissions to the Tribunal, Mr. Abd Al Shaded asks that I consider that this is his first violation and his capacity to pay the fine. The [AAAMP Act](#) does not allow me to consider either factor when reviewing the Minister's decision to uphold the Notice. Subsection 14(1) of the [AAAMP Act](#) is clear, unambiguous, precise, and narrow. The Tribunal must determine whether the facts of the violation have been proven and whether the penalty imposed complies with the requirements outlined in the [AAAMP Regulations](#).

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

[15] I find that the \$1300 penalty issued to Mr. Abd Al Shahed was imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#). Subsection 5(1) of the [AAAMP Regulations](#) mandates a \$1300 penalty for violations which are categorized by the [AAAMP Regulations](#) as very serious. Schedule 1 of the [HA Regulations](#) lists violations of subsection 16(1) of the [HA Act](#) as very serious.

[16] Having determined that the essential elements of a violation of subsection 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. Abd Al Shahed with the \$1300 penalty is lawful and justified.

5. ORDER

[17] I confirm the Minister's finding that Mr. Abd Al Shahed committed the violation in the Notice and must pay the penalty of \$1300 to the Agency.

[18] I order that payment will be made in installments of \$150/month commencing on June 15th, 2022, and each month thereafter until the entire \$1300 penalty has been paid.

[19] I wish to inform Mr. Abd Al Shahed 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](#).



Patricia L. Farnese
Member
Canada Agricultural Review Tribunal