



Commission de révision
agricole du Canada
Ottawa, Canada
K1A 0B7

Canada Agricultural
Review Tribunal

Citation: *Kibakala v Canada Border Services Agency*, 2022 CART 15

Docket: CART-2022-BNOV-007

BETWEEN:

HARMONY KIBAKALA

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

WITH: Mr. Harmony Kibakala, representing himself; and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent

DECISION DATE: May 27, 2022

1. INTRODUCTION

[1] This matter concerns the request for review of Notice of Violation (Notice) # 3961-22-0253 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 Mr. Harmony Kibakala meets 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 February 27, 2022, Mr. Kibakala was served with this Notice at the Montréal Pierre-Elliott-Trudeau International Airport for having allegedly failed to present dried sausages he had in his possession upon entering the country. In doing so, he 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 administrative monetary penalty.

[4] For the following reasons, in accordance with rule 32 of the [*Tribunal Rules*](#), I find Mr. Kibakala’s request for review is 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, Mr. Kibakala is deemed to have committed the violation in accordance with section 9 of the [*AAAMP Act*](#).

2. BACKGROUND

[5] On April 7, 2022, the Canada Agricultural Review Tribunal (Tribunal) received a request for review of the Notice, submitted by Mr. Kibakala via email. The request contained Mr. Kibakala's request for review form.

[6] On April 7, 2022, the Tribunal sent a first acknowledgement letter to both parties, requesting that they comply with rules 30 and 31 of the [Tribunal Rules](#) before April 22, 2022. Additionally, Mr. Kibakala was urged to comply with rule 13 of the [Tribunal Rules](#) before April 22, 2022, by sending a copy of his request to the Tribunal via registered mail so that the Tribunal could consider whether it was admissible.

[7] On April 12, 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.

3. ISSUE

[8] Does Mr. Kibakala 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

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

[10] 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 of violation, 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](#).

[11] 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 of violation was served. In this case, Mr. Kibakala had to file his request no later than March 29, 2022.

[12] Since Mr. Kibakala failed to send his request for review in the prescribed time and manner, the Tribunal must find the request for review to be inadmissible.

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

5. ORDER

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

[15] I **ORDER** Mr. Kibakala to pay the administrative monetary penalty of \$1,300 within 30 days of receiving this decision.

[16] Finally, I wish to inform Mr. Kibakala that this violation is not a criminal offence. After five years, he is entitled to apply to the Minister of Agriculture and Agri-Food to have the Notice removed from his record, in accordance with section 23 of the [AAAMP Act](#).



Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal