



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Slavik v Minister of Public Safety and Emergency Preparedness*, 2022 CART 30

Docket: CART- 2022-BMR-015

BETWEEN:

ROMAN SLAVIK

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Patricia L. Farnese, member

WITH : Mr. Roman Slavik, representing himself; and
Mr. Gaston Boisvert, representing the Respondent

DECISION DATE: November 16, 2022

HEARING BY WRITTEN SUBMISSIONS ONLY

1. INTRODUCTION

[1] Mr. Slavik 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 pork sausage when he entered Canada on a flight from Prague via Paris contrary to subsection 16(1) of the [Health of Animals Act](#) (HA Act). The Agency's video surveillance and the Border Security Officer's report that the sausage had been in Mr. Slavik's luggage prior to his removal and attempt to conceal it have proven that it was more likely than not that Mr. Slavik committed the violation. Even if I were to apply a more stringent standard of proof as Mr. Slavik requests, the Agency has proven that Mr. Slavik committed the violation. Contrary to Mr. Slavik's belief, his actions to evade the Notice only added to the proof that the Notice with penalty was warranted. Mr. Slavik must pay the penalty of \$1300.

2. LEGAL FRAMEWORK

[2] Subsection 12(1) of the [Customs Act](#) requires that travellers declare at the nearest custom office 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 (PI Kiosk). 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 before deciding to declare. Anyone bringing goods into Canada has a duty to fully declare what they are bringing into the country.¹

[3] 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 [Health of Animals Act](#) (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.

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

[4] Subsection 16(1) of the [HA Act](#) requires that any person who imports an animal, animal product or animal by-product into Canada present the item to an Officer for inspection either before or at the time of importation. Answering ‘yes’ to the question at the PI Kiosk that asks whether you are bringing any meat or animal products into Canada meets the subsection 16(1) requirement.

[5] Section 40 of the [HA Regulations](#) prohibits the import of all animal by-products into Canada except as permitted by Part IV. Part IV allows a person to import some agricultural products, including animal by-products, under certain conditions. The Canadian Food Inspection Agency (CFIA) decides the conditions that allow agricultural products to be imported into Canada. Officers rely on the [Automated Import Reference System](#) (AIRS),² which is also available to the public, to identify these import requirements when they encounter an animal product during an inspection.

[6] The [HA Act](#) and the [HA Regulations](#) are enforced through the uniform enforcement process set out in the [AAAMP Act](#), and the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations). The [AAAMP Act](#) and [AAAMP Regulations](#) categorize each violation as either minor, serious, or very serious and impose mandatory penalties based on the category of violation. The [AAAMP Act](#) is an absolute liability regime. There are almost no defences allowed that will excuse someone of liability once the Agency has proven violation.

[7] The Canada Border Services Agency (Agency) must prove the following essential elements of subsection 16(1) of the [HA Act](#) , on a balance of probabilities:³

1. Mr. Slavik is the person identified in the Notice;
2. Mr. Slavik 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,

² Government of Canada, *Automated Import Reference System* (AIRS) online: Government of Canada https://airs-sari.inspection.gc.ca/airs_external/english/decisions-eng.aspx.

³ [Santos v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2021 CART 17.

4. Mr. Slavik did not declare the product in question at first contact with Agency officers and therefore did not make it available for inspection;

[8] A person can contest a Notice by requesting a review of the facts of the violation by the Minister. The Tribunal can subsequently review the Minister's decision. 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 Tribunal confirms the violation, the Tribunal will also consider whether the penalty imposed follows the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#).

[9] This decision arises from my review of the Minister's decision #2106450-1 confirming Notice #4974-21-0500. As mandated in subsection 13(2)(b) of the [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.⁴

3. ISSUES

[10] There are two core issues in this case:

Issue #1: Did Mr. Slavik import pork sausage into Canada?

Issue #2: Did Mr. Slavik's efforts to conceal the sausage after its initial detection raise sufficient doubt to undermine the Agency's proof that he committed the violation?

⁴ [Seyfollah v Minister of Public Safety and Emergency Preparedness, 2021 CART 28](#) at para 6.

4. ANALYSIS

[11] The second element of the violation is the focus of Mr. Slavik's request for review. He asserts that the Agency has not proven that the sausage found concealed behind a vending machine in the secondary inspection area belonged to him. He does not dispute that the Agency has proven elements 1, 3, and 4.

[12] The Agency has proven element 1 by showing that Mr. Slavik is the person identified in the Notice. The Agency verified Mr. Slavik's identity with his Ontario's Driver's License and his passport. Mr. Slavik also confirmed that the luggage where Officer found the pork sausage was his. In addition, Mr. Slavik does not dispute receiving the Notice for failing to declare the pork sausage.

[13] The Agency has also proven the third element. Mr. Slavik did not present any documentation to the Officer, to the Minister, or the Tribunal that demonstrates that he was authorized to bring pork sausage into Canada. AIRS prohibits the import of pork products from the Czech Republic to prevent the introduction of African Swine Fever.

[14] The record of Mr. Slavik's declaration at the PI Kiosk also indicates that 'no' was his response to the question about importing meat and animal products. The Agency established element 4 by providing the Officer's notes and report that outline that Mr. Slavik responded "almost nothing" when asked by the Officer in secondary inspection whether he had anything to declare. The FCA in [Savoie-Forgeot](#),⁵ explained that to avoid a violation, a person must disclose goods and make them available for inspection. Mr. Slavik's response is not a sufficient declaration. Mr. Slavik's continual denial that the pork sausage was his is also inconsistent with a finding that a declaration was made.

⁵ [Canada v Savoie-Forgeot, 2014 FCA 26](#) at para 25.

Issue #1: Did Mr. Slavik import pork sausage into Canada?

[15] Officer Jantos' report explains that Mr. Slavik's luggage was lawfully searched because the luggage attracted the attention of the detector dog. During that search, Officer Jantos found a dry-cured, pork sausage, wrapped in plastic with a green, white, and red label. He also found 3 apples. Mr. Slavik was sent to the secondary inspection area with his luggage. Officer Jantos asked Mr. Slavik to identify the luggage as his own. Mr. Slavik also told Officer Jantos that he packed the luggage himself and was aware of its contents. Officer Jantos searched the luggage again in Mr. Slavik's presence, but only found the 3 apples.

[16] Officer left Mr. Slavik to consult the video surveillance footage of Mr. Slavik retrieving his luggage. He believed the video footage showed Mr. Slavik removing something from his luggage before entering the secondary inspection area. When Officer Jantos returned to the secondary inspection area to further question Mr. Slavik, two of the three apples were missing. Officer Jantos later found the partially eaten apples in a nearby garbage can. Mr. Slavik admitted eating the apples but continued to deny that he brought pork sausage into Canada despite Officer Jantos informing him that he may be subject to a search of his person.

[17] When Officer Jantos left Mr. Slavik to consult with his supervisor, Officer Jantos learned that video surveillance footage of Mr. Slavik moving from the baggage carousel to the secondary inspection area showed Mr. Slavik stopping in the hallway near a vending machine. The Agency submitted into evidence still photographs of the video footage. The photos confirm that Mr. Slavik stops, leans down towards the floor, and reaches behind the vending machine. I find nothing in the photos to explain Mr. Slavik's behaviour at the vending machines.

[18] After watching the video footage, Officer Jantos searched the area behind the vending machine and found the sausage he said was first discovered in Mr. Slavik's luggage. His report explains that he identified it as the same sausage by its packaging. The sausage was wrapped in plastic with the same green, white, and red label. Given the short period of time between when

the sausage was first discovered and subsequently retrieved, I have no difficulty finding that Officer Jantos readily identified the sausage as the same sausage he earlier discovered in Mr. Slavik's luggage thereby proving element 4.

Issue #2: Did Mr. Slavik's efforts to conceal the sausage after its initial detection raise sufficient doubt to undermine the Agency's proof that he committed the violation?

[19] Mr. Slavik has not put forth any acceptable defences to the violation. Instead, he challenges the Agency to provide "conclusive" proof that he removed a sausage from his luggage and concealed it behind the vending machine. While Mr. Slavik correctly observes that one cannot see what, if anything, he placed behind the vending machine from the video footage, he incorrectly concludes that the Agency has not proven that he committed the offence as a result. The violation Mr. Slavik is alleged to have committed is not a criminal offence that would be subject to more stringent standard of proof. The Agency is only required to convince the Tribunal that it was more likely than not that the sausage came from Mr. Slavik's luggage and that he failed to declare the sausage.

[20] Even if the higher criminal standard of beyond a reasonable doubt was required in this case, I find that the Notice was justified. A detector dog, trained to locate food and agricultural products inside luggage identified Mr. Slavik's luggage as containing these products. Mr. Slavik provided no cause for me to doubt the truthfulness of Officer Jantos' report that he initially searched Mr. Slavik's luggage and found a sausage with 3 apples, that the sausage was not found during a subsequent search of Mr. Slavik's luggage after the luggage was returned to Mr. Slavik's possession, and that the sausage was ultimately located behind a vending machine. The video footage supports Officer Jantos' account that Mr. Slavik's suspicious behaviour led him to search behind the vending machine where the sausage was recovered.

[21] That Mr. Slavik attempted to conceal the sausage from Officer Jantos is the only plausible explanation for the very sausage first detected in Mr. Slavik's luggage being recovered from behind

the vending machine. Mr. Slavik has not provided the Tribunal with an alternate explanation for his behaviour at the vending machine. Moreover, the video footage does not show that Mr. Slavik dropped something that required retrieval or that he purchased anything from the vending machine.

[22] Given the strength of the Agency's evidence in this case, I have no hesitation confirming the Minister's decision to uphold the Notice. The Agency has established the essential elements of a violation of section 16(1) of the [HA Act](#). I find that Officer Jantos followed the process for determining the amount of the penalty outlined in the [AAAMP Regulations](#). Schedule 1 of the [HA Regulations](#) lists violations of section 16(1) of the [HA Act](#) as very serious. Section 5(1) of the [AAAMP Regulations](#) mandates a \$1300 penalty for violations which are categorized by the [AAAMP Regulations](#) as very serious.

[23] To avoid the potential duty on the sausage or its seizure, Mr. Slavik chose to provide a dishonest declaration and to conceal that fact after his dishonesty was discovered. His actions have resulted in a \$1300 and a public record in the form of this decision that calls his integrity and honesty into question. This case should give pause to anyone who may consider not truthfully declaring all products being brought into Canada.

5. ORDER

[24] I confirm the Minister's finding that Mr. Slavik committed the violation in the Notice and must pay the penalty of \$1300 to the Agency within 60 days of this decision.

[25] I wish to inform Mr. Slavik 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 Farnese
Member
Canada Agricultural Review Tribunal