



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Nwuke Espe Keoula v Minister of Public Safety and Emergency
Preparedness*, 2023 CART 15

Docket: CART-2023-BMR-001

BETWEEN:

LINDA NWUKE ESPE KEOULA

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Emily Crocco, Chairperson

**WITH: Ms. Linda Nwuke Espe Keoula, the Applicant, and
Ms. Veronica Raymond, representing the Respondent**

DECISION DATE: May 23, 2023

WRITTEN SUBMISSIONS ONLY

1. INTRODUCTION/BACKGROUND

[1] On July 27, 2022, the Applicant arrived in Vancouver by air from Gabon.

[2] The Respondent's officers allege that the Applicant failed to declare that she was importing 10 kilograms of powdered milk and almost 4 kilograms of dried beef. They say that this violated subsection 16(1) of the [*Health of Animals Act*](#) (*HA Act*).

[3] As a result, the Respondent's officers issued Notice of Violation (Notice) #8212-22-0792 to the Applicant. The Notice imposed a \$1,300.00 penalty.

[4] On August 2, 2022, the Applicant requested that the Respondent review the Notice. The Respondent upheld the Notice in decision #2209188-1. The Applicant has requested that the Tribunal review that decision.

[5] The Applicant does not dispute that she imported the animal products. However, she disputes that she failed to declare them. She also says that if she violated any of Canada's laws, it was unintentional.

[6] For the reasons that follow, I confirm the Respondent's decision.

2. ISSUE IN THIS APPLICATION

[7] Subsection 16(1) of the *HA Act* requires everyone, either before or during importation, to present all animal products they are importing to an inspector or customs officer.

[8] A person who does not comply with subsection 16(1) of the *HA Act* may receive a Notice, with or without a financial penalty.

[9] The following are the essential elements of a violation of subsection 16(1) of the *HA Act*:

1. That the Applicant is the person identified in the Notice;
2. That the Applicant imported an animal, animal product, animal by-product or animal food into Canada; and
3. That the Applicant did not declare the product in question at first contact with the Respondent's officers and therefore failed to present it for inspection.

[10] The Respondent provided ample evidence, which the Applicant concedes, of the first two elements of the violation. As a result, the first question for my determination is whether the Applicant declared the animal products at first contact with the Respondent's officers.

[11] If the violation is established, I must also determine whether the Applicant has raised a permissible defence. If she has not, I must then decide whether the penalty was calculated appropriately.

3. ARGUMENTS AND ANALYSIS

(a) The Applicant Did Not Declare the Animal Products

[12] In its submissions, the Respondent says that when the Applicant was asked by a Primary Inspection officer what food she was importing, the Applicant only mentioned "dried fish". When a Secondary Inspection officer found dried beef and powdered milk in her luggage, the Applicant said that she had reported the beef to the Primary Inspection officer.

[13] The officers' notes of their interaction with the Applicant are consistent with these submissions.

[14] In her submissions, the Applicant says that the Primary Inspection officer did not ask her what food she was importing. Instead, she says that the officer asked her if she was just importing fish. The Applicant says that she truthfully answered “yes”. She says that if the officer had asked her what else she was importing, she would have mentioned the beef and milk.

[15] The Applicant says that she was truthful at all times. She notes that she had accurately answered on her Declaration Card that she was importing animal products. She also writes that she had declared more than fish on her declaration card from Gabon.

[16] In [*Canada \(Attorney General\) v Savoie-Forgeot*](#), 2014 FCA 26 at para 25 (“*Savoie-Forgeot*”), the Federal Court of Appeal determined that:

Disclosure of goods and making them available for inspection should occur at the first contact with customs officials and not later, when a search is imminent or under way.

[17] This means that it does not matter whether the Primary Inspection officer asked the Applicant what animal products she was importing. The Applicant was required to tell the officer about all of the animal products she was importing.

[18] It was also not enough that the Applicant had filled in the Traveller Card or the Gabon declaration card. She needed to specify the animal products to the first officer she spoke with upon entry into Canada. On this issue, see *Savoie-Forgeot* at para 26.

[19] The Applicant acknowledges that she did not do so regarding the milk product. As a result, the violation is established.

(b) Honest Mistake and Ignorance of the Law

[20] Section 18 of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (*AAAMP Act*) states that a person named in a Notice “does not have a defence” by reason that the person “reasonably and honestly believed in the existence of facts that, if true, would exonerate the person”.

[21] As a result, the Applicant’s arguments that she made an honest mistake (given her good character and unawareness of Canada’s laws) are not permissible defences.

(c) Calculation of Penalty

[22] Division 1 of Part 1 of Schedule 1 of the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (*AAAMP Regulations*) classifies a violation of subsection 16(1) as “very serious”.

[23] Paragraph 5(1)(c) of the *AAAMP Regulations* states that the penalty for a “very serious” violation is \$1,300.00.

[24] As the Applicant violated subsection 16(1) of the *HA Act*, the \$1,300.00 penalty imposed on the Applicant complied with the law.

4. CONCLUSION

[25] I confirm the Respondent’s decision.

[26] The Applicant must pay the \$1,300.00 penalty to the Respondent within sixty days of notification of this decision.

[27] This violation is not a criminal offence. Pursuant to section 23 of the *AAAMP Act*, five years after the date on which the Applicant pays the penalty, she has the right to

apply to the Minister of Agriculture and Agri-Food to have the violation removed from the records.

Dated on this 23rd day of May 2023.

A handwritten signature in cursive script that reads "Emily Crocco". The signature is written in black ink and is positioned above a horizontal line.

Emily Crocco
Chairperson
Canada Agricultural Review Tribunal