Canada Agricultural Review Tribunal
Commission de révision agricole du Canada
Ottawa, Canada
K1A 0B7

Citation: *2109668 Ontario Limited v Canadian Food Inspection Agency*, 2023 CART 18

Docket: CART-2141

BETWEEN:

2109668 ONTARIO LIMITED DBA LOCAL DAIRY

APPLICANT

- AND -

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

BEFORE: **Emily Crocco, Chairperson**

WITH: **Mr. Amarjit Singh, representing the Applicant**
Mr. Teza Lwin, representing the Respondent

DECISION DATE: **June 12, 2023**

VIRTUAL HEARING DATE: March 28 and April 18, 2023

Canada

1. INTRODUCTION/BACKGROUND

[1] The Applicant is requesting that the Canada Agricultural Review Tribunal ("Tribunal") review the Notice of Violation (Notice) #1819ON2020 that the Respondent issued against it and which imposed a $8,000.00 penalty.

[2] The Notice alleges that on July 24, 2018, the Applicant failed to deliver an imported meat product for inspection, contrary to subsection 9(2) of the *Meat Inspection Act (MIA)*.

[3] For the reasons that follow, the Notice and its penalty are upheld.

2. APPLICABLE LAWS

[4] The *MIA* was repealed in 2019. However, at the time of the events in question, in 2018, it was still in force.

[5] Subsection 9(2) of the *MIA* required everyone who imported a meat product into Canada to, "as soon as possible, deliver it, in its imported condition, to a registered establishment for inspection by an inspector".

[6] Pursuant to subsection 7(2) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (*AAAMP Act*) and paragraph 2(a) and section 5 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (*AAAMP Regulations*) (as they existed in 2018), a contravention of the *MIA* could result in a notice with a financial penalty.

3. PRELIMINARY ISSUE

[7] The Applicant's written closing submissions contain some evidence and allegations that were not previously alleged or raised during the proceedings.

[8] I agree with the Respondent in their reply closing submissions that closing submissions are not where new evidence can be fairly introduced.

[9] The Tribunal held the two-day hearing into this request more than 3.5 years after it was filed. Given this, the Applicant had many opportunities to refer to the evidence prior to closing submissions.

[10] As a result, I am disregarding reference to evidence and allegations in the Applicant's closing submissions that were not previously raised during the proceedings.

4. ISSUES

[11] Notwithstanding the long and contested historical backdrop of this dispute, the issues before me are straightforward.

[12] First, has the Respondent established a violation of subsection 9(2) of the *MIA*?

[13] To determine this, I must consider the following essential elements of a violation of subsection 9(2) of the *MIA*:

1. Was the Applicant the person identified in the Notice?
2. Did the Applicant import a meat product into Canada? and
3. Did the Applicant fail to deliver the meat product in question:

    (a) As soon as possible,
    (b) In its imported condition,
    (c) To a registered establishment,
    (d) For inspection by an inspector?

[14] There is no question that the Applicant is the person identified in the Notice or that the Applicant imported a meat product into Canada. At paragraph 9 of their *Agreed*

Statement of Facts, the parties agree that on July 24, 2018, the Applicant imported meat products into Canada.

[15] The dispute here is really about whether the Applicant delivered the meat products, as soon as possible, in their imported condition, to a registered establishment for inspection by an inspector.

[16] The parties also disagree about whether the Applicant has successfully raised any defences which would eliminate the violation or change how the penalty was calculated.

[17] Finally, I must determine whether the Respondent appropriately calculated the penalty.

5. ANALYSIS

(a) The Violation is Established

[18] In its submissions, the Respondent argues that subsection 9(2) of the *MIA* was breached. I agree.

[19] Subsection 9(2) of the *MIA* required not only that the meat product be delivered to a registered establishment “for inspection”, but that it be brought “as soon as possible” in its “imported condition”.

[20] The evidence is clear that the Applicant did none of these things on or after July 24, 2018, which is the importation date about which the Notice relates. In particular, I note that in the parties’ *Agreed Statement of Facts*, when the Respondent’s officer asked the Applicant’s representative on July 25, 2018, to correct an accounting form (called a “B3”) and “return with the product”, the Applicant’s representative “notified the CBSA officer that the product was sold”.

[21] The Applicant does not dispute that it did not bring the meat for inspection on or after it imported it on July 24, 2018. However, the Applicant essentially argues that it did bring the meat in question for inspection on or after July 24, 2018, because it was the same meat that it had previously brought for inspection on July 12, 2018, further to an importation on July 3, 2018.

[22] However, the meat presented on July 12, 2018, was refused entry. The Respondent ordered the Applicant to remove the meat from Canada. The Applicant did so. That importation ended.

[23] The Applicant decided to restart the importation process. It completed many of the required steps. One thing that it did not do after it imported the meat on July 24, 2018, however, was present the meat for inspection.

[24] The requirements in subsection 9(2) of the *MIA* relating to the July 24, 2018, importation were not met by the July 12, 2018, failed inspection relating to the July 2, 2018, refused importation. That previous inspection applied to the previous attempted importation.

[25] Because the Applicant sold the meat before it could be inspected on or after its importation into Canada on July 24, 2018, the violation is established.

(b) The Applicant Has Not Provided a Persuasive Defence

[26] The following paragraphs summarize the Applicant's central defences and why I find them unpersuasive.

(i) "Cancelled" B3 Form

[27] In its written submissions, the Applicant argues that because the original B3 form it completed on July 24, 2018, was "cancelled" by the Respondent, there is no basis for the violation.

[28] The determination of whether someone imported meat under the *MIA* is a question of fact.

[29] On July 24, 2018, the Applicant brought meat that was previously outside of Canada into Canada. It was importing it. This triggered the requirements of subsection 9(3) of the *MIA*.

(ii) Honest Mistake and Ignorance of the Law

[30] The Applicant argues that it "did not knowingly intend to violate" the *MIA*, that "[t]his was the first time that [it] was doing a reentry", and that it had a long history of compliance.

[31] 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".

[32] As a result, the Applicant's arguments that it made an honest mistake and has a long history of compliance is not a permissible defence against the issuance of the Notice. That said, the Applicant's compliance history is relevant in determining the amount of the penalty, and will be discussed later in these reasons.

(iii) Misleading or Incomplete Information

[33] The Applicant argued that the Respondent's agents falsified documents, failed to follow the Respondent's policies, and otherwise behaved in discreditable ways. Because it is not necessary for me to assess and make determinations on these allegations to resolve the issues before me, I decline to do so.

[34] The Applicant also argues that its representative was not told that it had to bring the meat for inspection and that the Respondent's representative gave the Applicant

misleading information on the issue. The Applicant argues that as a result, it should not be responsible for its failure to do so.

[35] I have not found compelling evidence that the Respondent's representative said anything that was misleading.

[36] The Respondent's inspector told the Applicant that upon re-entry the meat would need to be presented for inspection "if required". The comment did not say, either way, whether presentation of the meat for inspection was required.

[37] In my view, the comment that should have reminded the Applicant of its obligations under the *MIA*. Instead, it appears that the Applicant interpreted the "if required" comment as meaning the meat would only have to be brought for inspection if the Applicant were ordered by someone to do so.

[38] However, that is not what subsection 9(2) of the *MIA* required. It did not say something akin to an importer being required to present the imported meat "upon direction by the Minister's officers", or something similar. The requirement was broader. Someone importing meat into Canada was required to present it for inspection.

[39] Moreover, this obligation existed whether or not the person was reminded of it by the Respondent's agents.

(c) The Penalty Was Calculated Appropriately

[40] Division 1 of Part 3 of Schedule 1 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (*AAAMP Regulations*) classified a violation of subsection 9(2) of the *MIA* as "very serious".

[41] Subsection 5(3) of the *AAAMP Regulations* states that the penalty for a "very serious" violation made in the "course of business", subject to any adjustments determined for its "total gravity value" ("TGV"), was $10,000.00.

[42] Section 6 and Schedule 3 of the *AAAMP Regulations* states that the TGV of an offence is determined by considering the:

1. Compliance history of the person, by looking at prior violations or convictions within five years of the assessment;
2. The intent or negligence of the person; and
3. The harm caused by the offence.

[43] A lower TGV score is better for a person charged with a violation because it can reduce the amount of the penalty, whereas a higher score can increase the amount of the penalty.

[44] The Respondent determined that the Applicant had no previous violations within five years before the day the violation was assessed. This is not in dispute. As a result, the Applicant properly received the lowest possible TGV score, of zero, with respect to "compliance history".

[45] The Respondent determined that the violation caused or would cause minor harm. The evidence supported this. As a result, the Applicant properly received the lowest possible TGV score, of one, under the "harm" heading.

[46] Finally, the Respondent determined that the violation was committed as a result of a negligent act. The Applicant disputes this. For the reasons that follow, I agree with the Respondent's assessment.

[47] As my colleague determined in *A. S. L'Heureux Inc.* v. *Canada (Canadian Food Inspection Agency)*, 2018 CART 9 at para 75, negligence in the context of the *AAAMP Regulations* occurs where:

> "…the offender failed to take all of the measures that a responsible company would have taken in the same circumstances to avoid the violation and did not take all reasonable steps to ensure *"the proper operation of the system."*"

[48] In this case, all the Applicant had to do was present the meat for inspection as soon as possible after it imported it on July 24, 2018, in its "imported condition". Not only did the Applicant fail to do so, it also made it impossible by selling the meat within one day of its importation.

[49] To the extent that the Applicant was unclear about its responsibilities regarding inspection when attempting to import meat that had previously been denied entry, it should have obtained clarification.

[50] Furthermore, I received no evidence that the Applicant voluntarily disclosed the violation, so a lesser TGV score under the "Intent or Negligence" heading would have been inappropriate.

[51] For these reasons, the Respondent properly assessed the violation as occurring due to negligence, and the Applicant properly received the TGV score of three under the heading "intent or negligence".

[52] Adding these scores together, the Applicant's total TGV score was four. Pursuant to Schedule 2 of the *AAAMP Regulations*, a TGV score of four results in a penalty being reduced by 20%. In this case, the penalty was therefore properly reduced from $10,000.00 to $8,000.00.

[53] As a result, the penalty was properly calculated.

6. CONCLUSION

[54] The violation and the amount of the penalty are confirmed.

[55] The Applicant must pay the $8,000.00 penalty to the Respondent within sixty days of notification of this decision.

[56] 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, it has the right to apply to the Minister of Agriculture and Agri-Food to have the violation removed from the records.

Dated on this 12th day of June 2023.

Emily Crocco
Chairperson
Canada Agricultural Review Tribunal