Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: *Hassan v. Canada (Canada Border Services Agency)*, 2013 CART 32

Date: 20131008
Docket: CART/CRAC-1642

Between:

Nehad Hassan, Applicant

- and -

Canada Border Services Agency, Respondent

Before: **Chairperson Donald Buckingham**

With: **No one appearing for Nehad Hassan; and**
David Davis, appearing as representative for the Canada Border Services Agency

In the matter of an application made by the applicant, pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of the facts of a violation of section 40 of the *Health of Animals Regulations*, alleged by the respondent.

DECISION

[1] Following an oral hearing and a review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines, on the balance of probabilities, that the applicant committed the violation set out in Notice of Violation 3961-12-M-0160, dated May 31, 2012, and must pay to the respondent a monetary penalty of $ 800 within thirty (30) days after the day on which this decision is served.

The hearing was held in Montreal, PQ,
On Monday, September 16, 2013.

REASONS

Alleged Incident and Issues

[2] A chunk of pastrami from Egypt is at the heart of this matter. The respondent, the Canada Border Services Agency (Agency), alleges that, on May 31, 2012, at P.-E.-Trudeau International Airport in Dorval, Quebec (Dorval Airport), the applicant, Nehad Hassan (Hassan), imported meat products into Canada contrary to section 40 of the *Health of Animals Regulations,* from Egypt, a country from which it is unlawful to import meat products without meeting the requirements of "Part IV – Importation of Animal By-Products, Animal Pathogens and Other Things" of the *Health of Animals Regulations*.

[3] The applicable provisions of Part IV of the *Health of Animals Regulations* are reproduced below:

> ***40.*** *No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part.*
>
> ***41.*** *(1) A person may import into Canada an animal by-product, manure or a thing containing an animal by-product or manure, other than one described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if*
>
> > *(a) the country of origin is the United States and the by-product, manure or thing is not derived from an animal of the subfamily* Bovinae *or* Caprinae*;*
> >
> > *(b) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate of origin signed by an official of the government of that country attesting to that origin; or*
> >
> > *(c) the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in a manner that would prevent the introduction into Canada of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate signed by an official of the government of the country of origin that*
> >
> > > *(i) attests that the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in that manner, and*

(ii) shows the details of how it was collected, treated, prepared, processed, stored and handled.

(2) Subsection (1) does not apply in respect of manure found in or on a vehicle that is entering Canada from the United States if the manure was produced by animals, other than swine, that are being transported by the vehicle.

41.1 *(1) Despite section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than one described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if an inspector has reasonable grounds to believe that the importation of the by-product or thing, by its nature, end use or the manner in which it has been processed, would not, or would not be likely to, result in the introduction into Canada of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product was derived is susceptible and that can be transmitted by the by-product, and the by-product or thing is not intended for use as animal food or as an ingredient in animal food.*

(2) No person shall, in respect of any animal by-product or thing containing an animal by-product that has been imported in accordance with subsection (1), use or cause it to be used as animal food or as an ingredient in animal food.

...

43. *A person may import into Canada cooked, boneless beef from a country or a part of a country not referenced to in section 41 if*

(a) it was processed in a place and in a manner approved by the Minister;

(b) it is accompanied by a meat inspection certificate of an official veterinarian of the exporting country in a form approved by the Minister; and

(c) on examination, an inspector is satisfied that it is thoroughly cooked.

...

46. *No person shall import into Canada meat and bone meal, bone meal, blood meal, tankage (meat meal), feather meal, fish meal or any other product of a rendering plant unless, in addition to the requirements of sections 166 to 171,*

(a) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is susceptible and that can be transmitted by the product, and the person

produces a certificate of origin signed by an official of the government of that country attesting to that origin; and

(b) an inspector has reasonable grounds to believe that the product has been processed in a manner that would prevent the introduction of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is susceptible and that can be transmitted by the product.

...

52. *(1) Despite anything in this Part, a person may import into Canada an animal by-product if the person produces a document that shows the details of the treatment of the by-product and an inspector has reasonable grounds to believe—based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, if necessary, on an inspection of the by-product—that the importation of the by-product would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.*

(2) Notwithstanding anything in this Part, a person may import an animal by-product under and in accordance with a permit issued by the Minister under section 160.

[Underlining added]

[4] The Tribunal must determine whether the Agency has established all the elements required to support the impugned Notice of Violation and, if Hassan did import meat into Canada, whether he met the requirements that would have permitted such importation.

Procedural History

[5] Notice of Violation 3961-12-M-0160, signed by Agency Inspector 25580 and dated May 31, 2012, alleges that, at Dorval Airport, in the province of Quebec, Hassan [Translation *verbatim* from the French] "committed a violation, namely: importation of an animal by-product, to wit: meat, without meeting the prescribed requirements contrary to section 40 of the *Health of Animals Regulations*", which is a violation under section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (Act) and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (Regulations).

[6] The Agency served Hassan personally with the Notice Violation on May 31, 2012. The Notice of Violation indicated to Hassan that the alleged violation is a "serious violation" under section 4 of the Regulations, for which a penalty in the amount of $800.00 is assessed.

[7] By letter faxed to the Tribunal dated June 14, 2012, Hassan requested a review by the Tribunal of the facts of the violation (Request for Review), in accordance with paragraph 9(2)(*c*) of the Act.

[8] On July 9, 2012, the Agency sent copies of its report (Agency Report) regarding this matter to Hassan and to the Tribunal, the latter receiving it on July 10, 2012. On July 19 and 23, 2012, the Agency informed the Tribunal that their Agency Report sent to Hassan had been returned to them undelivered on two occasions. Through the work of Tribunal staff, Hassan's new address was secured and forwarded to the Agency.

[9] By letter dated July 25, 2012, the Tribunal invited Hassan and the Agency to file with it any additional submissions in this matter no later than August 24, 2012. Given the difficulty of reaching Hassan, this letter, along with the Agency Report, was emailed and sent by regular mail to Hassan. Neither Hassan, nor the Agency filed any additional submissions further to this invitation prior to the hearing of the matter.

[10] In the month of August 2012, Tribunal staff spoke with Hassan and confirmed that he wished to proceed by way of an oral hearing conducted in English, in accordance with subsection 15(1) of the Regulations.

[11] After one adjournment of the hearing, by registered letter dated June 26, 2013, the Tribunal notified the parties that the hearing of this matter would take place in Montreal, Quebec, on September 16, 2013. Both parties acknowledged receipt of this Notice of Hearing.

[12] The oral hearing requested by Hassan took place on the premises of the Courts Administration Services, located at 30 McGill Street, Montreal, Quebec, on September 16, 2013, as set out in the Notice of Hearing, with the Agency represented by Mr. David Davis (Davis). Hassan did not appear when the case was called at 10:00 a.m. As Hassan was absent, the Tribunal proceeded with its next case. After the conclusion of that case, the Hassan matter was recalled at approximately 12:24 p.m., by the Tribunal. Hassan was still not present in the courtroom. The Tribunal then recessed for lunch. Hassan's case was again recalled at 1:45 p.m., but Hassan was not present. Satisfied that the Notice of Hearing had been sent to Hassan in accordance with the Tribunal's rules, and that he had orally acknowledged to Tribunal staff receipt of the Notice of Hearing and therefore had knowledge of the date and location of the hearing, the Tribunal proceeded with the hearing in the absence of Hassan, pursuant to its authority under section 41 of the *Rules of the Review Tribunal (Agriculture and Agri-Food)* SOR/99-451 (Rules).

[13] As a preliminary motion, Davis requested that the Tribunal correct two "clerical errors" in the Agency's documentation. The first appeared on page 10, paragraph 6 of the Agency Report, where the name "Lemotomo" had been used instead of the name "Hassan". As this error is found only in the summary of the facts of the case; is found nowhere else in Agency's documents; it does appear to be a clerical error; and as the summary of the facts of the case is not strictly speaking "evidence", the Tribunal granted this change from

"Lemotomo" to "Hassan." It was determined that the applicant, Hassan, would not be in any way prejudiced by such a change.

[14] The second change requested was of a more serious nature and was found on the Notice of Violation itself. The document issued to Hassan, found at Tab 3 of the Agency Report, had incorrectly recorded his surname as "Hassab" rather than "Hassan". The Tribunal has on several other occasions been asked to grant, and in certain circumstances has granted, a rectification of the originating Notice of Violation. The Tribunal notes, for example, that in the *Kropelnicki v. Canada (CFIA)* series of decisions (2010 CART 22-25), involving reviews of Notices of Violation issued by the Canadian Food Inspection Agency, the Tribunal ordered rectification based on the consent of the parties. In other cases, even where there was no consent, such as in the case of *Knezevic v. Canada (CBSA)*, 2011 CART 21, the Tribunal granted a rectification of the Notice of Violation where it was clear to the Tribunal that such a change would not prejudice *Knezevic* in knowing the case against her and in preparing her defence. Such is the case here, that while there was no formal consent from Hassan on rectification, such a change would not prejudice him in knowing the case against him and in preparing his defence. Given the present facts, there is little doubt that Hassan did know the case against him, as he responded to it by launching a Request for Review. Unfortunately, he did not take the opportunity to share his insights further into the matter by attending the hearing or submitting any additional information. The Tribunal therefore grants this rectification of the surname on the Notice of Violation from "Hassab" to "Hassan" on the basis that this change would not prejudice Hassan in knowing the case against him and in preparing his defence. No confusion or prejudice was likely to have been caused to Hassan by this mistake made by the Agency in light of the fact that the mistake at page 10 of the Agency Report is the only other instance that refers to the applicant's surname as other than "Hassan".

Evidence

[15] The evidence presented to the Tribunal in this case consists of written submissions from the Agency (Notice of Violation and Agency Report) and from Hassan (submissions contained in his Request for Review), as well as oral testimony given by the witness at the oral hearing. The Agency called one witness, Agency Inspector 25580 at the oral hearing held on September 16, 2013.

[16] The Agency provided evidence with respect to the following facts:

- Hassan arrived at Dorval Airport on a return flight from Egypt on May 31, 2012, (Canada Border Services Agency Declaration Card E311 (Declaration Card) at Tab 1 of the Report; oral testimony of Inspector 25580).

- A Declaration Card was completed by Hassan, signed by him and dated May 31, 2012. The Declaration Card was marked, in particular, by ticking the "No" box beside the following statement: "I am/we are bringing into Canada: Meat/meat products; dairy products; fruits; vegetables; seeds; nuts; plants and animals or their parts/products; cut flowers; soil; wood/wood products; birds; insects" (Tab 1 of the Agency Report, oral testimony of Inspector 25580).

- Hassan was referred to secondary inspection after his Declaration Card was coded by the primary inspection officer for verification. In oral testimony, Inspector 25580 stated that when Hassan presented himself at secondary inspection, she asked him if he had packed his bags. He responded "Yes". She asked him if he was aware of their contents. He responded "Yes". She asked him if there was anything in his bags that might hurt her if she searched them. He responded "No". Inspector 25580 then proceeded to search the bags of Hassan and found a large piece of undeclared pastrami meat wrapped in plastic in his luggage, as well as two cartons of cigarettes, one which had been declared and one which had not. Inspector 25580 confirmed with Hassan that the large item wrapped in plastic was indeed meat, pastrami to be exact. Inspector 25580 told the Tribunal that Hassan had told her that it was his brother that had put the pastrami in his bag. Inspector 25580 testified that the conversation between her and Hassan took place in French and that there were no problems of comprehension for Hassan (oral testimony of Inspector 25580).

- Documents completed by Inspector 25580 at Tabs 2 and 4 of the Agency Report indicate that Hassan was in possession of undeclared pastrami from Egypt. The document at Tab 2 of the Report also states that the pastrami was found in Hassan's luggage and that he did not have any permits or certificates in his possession that would allow the importation of the meat (Tabs 2 and 4 of the Agency Report).

- Inspector 25580 told the Tribunal that she took coloured photos of the chunk of pastrami in question (Tab 5 of the Agency Report, oral testimony of Inspector 25580).

- Inspector 25580 testified that even before she found the food in Hassan's luggage, Hassan appeared agitated and very closed in his demeanour as he approached the secondary inspection counter. When Inspector 25580 found the undeclared meat and the one carton of undeclared cigarettes, Hassan appeared to her to withdraw completely, only telling her that the meat was Halal, his brother had put it there and that it came from Egypt. Inspector 25580 testified that, in her opinion, there was a real ambiguity in Hassan's story of Halal meat, the involvement of Hassan's brother in the situation, and the body language of Hassan. Given this ambiguity, Inspector 25580 testified that she felt it was appropriate to prepare and serve Hassan with a Notice of Violation and to

explain to him his options with regards to the Notice of Violation. Inspector 25580 told the Tribunal that during the whole process before her at secondary inspection, Hassan was very uncooperative and angry (oral testimony of Inspector 25580).

- Inspector 25580 acknowledged that, in her experience, and given the direction from the Automated Import Reference System (AIRS) of the Canadian Food Inspection Agency, the meat products she found in Hassan's possession were to be refused entry into Canada (oral testimony of Inspector 25580 and AIRS report found at Tab 7 of the Agency Report).

[17] There was no cross-examination of Inspector 25580 as Hassan did not appear at the hearing.

[18] The written evidence provided by Hassan in the Request for Review, forwarded to the Tribunal on February 9, 2012, states in part as follows [Translation *verbatim* from the French]:

…

> *With all my respect in that I am a Canadian citizen, who lives in Quebec on May 31, 2012 I returned from Egypt. My luggage was searched by Customs. I would like to point out that in the 25 years that I have been living here and in my different trips, I have never broken the laws when I have returned through Customs despite many searches that have been performed, but that is okay.*
>
> *This time, with all due respect to Customs, they found 200 grams of pastrami in my luggage that I did not declare because I did not know that it was there. I know that I am responsible but it is my brother who put it there in my luggage. He is Egyptian and does not know the law of Canada.*
>
> *I ask you please to pardon me for this small infraction as it is the first and last time that this will happen.*

…

Applicable Law and Analysis

[19] This Tribunal's mandate is to determine the validity of agriculture and agri-food administrative monetary penalties issued under the authority of the Act. The purpose of the Act is set out in section 3:

> **3.** *The purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts.*

[20] Section 2 of the Act defines "agri-food Act":

> "*agri-food Act*" *means the* Canada Agricultural Products Act, *the* Farm Debt Mediation Act, *the* Feeds Act, *the* Fertilizers Act, *the* Health of Animals Act, *the* Meat Inspection Act, *the* Pest Control Products Act, *the* Plant Protection Act *or the* Seeds Act.

[21] Pursuant to paragraph 4(1)(*a*) of the Act, the Minister of Agriculture and Agri-Food, or the Minister of Health, depending on the circumstances, may make regulations:

> *designating as a violation that may be proceeded with in accordance with this Act*
>
> > *(i) the contravention of any specified provision of an agri-food Act or of a regulation made under an agri-food Act*....

[22] The Minister of Agriculture and Agri-Food has made one such regulation, the Regulations, which designates as a violation several specific provisions of the *Health of Animals Act* and the *Health of Animals Regulations*, the *Plant Protection Act* and the *Plant Protection Regulations*. These violations are listed in Schedule 1 of the AMPs Regulations and include a reference to section 40 of the *Health of Animals Regulations*. Moreover, Schedule 1, Part 1, Division 2 of the AMPs Regulations, specifically sets out the classification, or severity, that must be attributed by enforcement Agencies and this Tribunal, to a violation of section 40 as follows:

Item	***Section HAR***	***Short-form Description***	***Classification***
79.	40	*Import an animal by-product without meeting the prescribed requirements.*	*Serious*

[23] The Act's system of administrative monetary penalties, as set out by Parliament, is very strict in its application. In *Doyon v. Attorney General of Canada (Doyon)*, 2009 FCA 152, the Federal Court of Appeal describes the administrative monetary penalties system as follows, at paragraphs 27 and 28:

> *[27] In short, the Administrative Monetary Penalty System has imported the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor's burden of proof. Absolute liability, arising from an* actus reus *which the prosecutor does not have to prove beyond a reasonable doubt, leaves the person who commits a violation very few means of exculpating him- or herself.*
>
> *[28] Therefore, the decision-maker must be circumspect in managing and analysing the evidence and in analysing the essential elements of the violation and the causal link. This circumspection must be reflected in the decision-maker's reasons for decision, which must rely on evidence based on*

facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay.

[24] Moreover, the Federal Court of Appeal, in *Doyon*, points out that the Act imposes an important burden on the Agency. At paragraph 20, the Court states:

> [*20] Lastly, and this is a key element of any proceeding, the Minister has both the burden of proving a violation and the legal burden of persuasion. The Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice: see section 19 of the Act.*

[25] Section 19 of the Act reads as follows:

> **19.** *In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice.*

[26] Therefore, it is incumbent on the Agency to prove, on the balance of probabilities, all the elements of the violation that form the basis of the Notice of Violation. In the case of a violation of section 40 of the *Health of Animals Regulations*, the Agency must prove the following:

- Hassan is the person who committed the violation;
- Hassan imported an animal by-product, in this case, pastrami into Canada; and
- if Hassan did import meat products into Canada, Agency officials gave him a reasonable opportunity to justify the importation in accordance with Part IV of the *Health of Animals Regulations*.

[27] The Tribunal must consider all the evidence, both written and oral, before it to determine whether the Agency has proven, on the balance of probabilities, each of the elements of the alleged violation.

[28] With respect to element 1, Hassan's identity, as the alleged violator, is not in dispute. The uncontroverted evidence before the Tribunal is that Hassan travelled to Canada from Egypt, completed and signed the Declaration Card, and was the person in whose luggage the pastrami was found. Throughout the entire secondary inspection process, the identity of Hassan, the alleged violator has been proven, on a balance of probabilities. The Tribunal finds, as fact, that Hassan was the alleged violator identified by Inspector 25580.

[29] With respect to element 2, the Tribunal accepts, as a finding of fact, on the balance of probabilities, that the Agency has established through evidence from Inspector 25580, and which was not denied by Hassan, that Hassan imported an animal by-product, in this case, pastrami, into Canada on May 31, 2012.

[30] The third element is also essential in proving a violation of section 40 of the *Health of Animals Regulations*. That section, as noted above, states as follows: "*No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part*." Moreover, the Minister of Agriculture and Agri-Food, in the Regulations, has found it necessary to designate in the listing of section 40 of the *Health of Animals Regulations* in Schedule 1, Part 1, Division 2 (Violation #79, section 40) of those *Regulations* that the violation relates to the: "Import an animal by-product without meeting the prescribed requirements". In both instances—in the *Health of Animals Regulations* themselves, and in the listing of the violation under the Regulations—the violation mentions and permits a justification from the alleged offender.

[31] There can be no doubt, that alleged violators of section 40 may defend themselves by adducing evidence proving they met the prescribed requirements permitted under Part IV of the *Health of Animals Regulations*. Moreover, the responsibility and burden for persuading the Agency, or eventually the Tribunal, that a person has met the prescribed requirements of Part IV falls on the alleged violator and he or she must take all necessary and reasonable steps to make such a justification known. Normally, this justification will take one of two forms, either by:

- the traveller declaring any animal by-products to the Agency, either in writing on that person's Declaration Card or in person to an Agency official once that person had deplaned and entered Canada on his way through an airport, such that an Agency inspector could inspect the product and determine if it should be allowed entry into Canada pursuant to section 41(1)(*a*) or section 41.1(1) of the *Health of Animals Regulations*; or

- the traveller producing a certificate (section 41(1)(*b*); section 41(1)(*c*); section 43; section 46), document (section 52(1)), or permit (section 52(2)), such that the meat product would be permitted to be imported into Canada under Part IV.

[32] The third element of the violation – that Hassan did import meat products into Canada and that Agency officials provided him a reasonable opportunity to justify the importation in accordance with Part IV of the *Health of Animals Regulations* – in the grand majority of cases, would be an element of the violation that is very easily met by the Agency, as the threshold for adducing sufficient evidence is extremely low. Normally, the Agency would have only to prove to the Tribunal that the traveller's Declaration Card was falsely marked or that the person understood and answered "No" to the primary inspector's question as to whether the traveller was bringing meat products into Canada, following which the traveller would be given an opportunity to produce a certificate,

document or permit, which would allow for the importation of the meat product. In the case of a person who understands either of Canada's official languages, the Agency's burden to prove that they had afforded a traveller a reasonable opportunity to justify any importation of meat products in accordance with Part IV of the *Health of Animals Regulations* would normally be quickly and easily met.

[33] The Tribunal finds, in this case, that the Agency has met this burden. Evidence from the Agency showed that Hassan marked "No" to the food question on his Declaration Form. Evidence also showed that at no time before Inspector 25580 found the meat in Hassan's luggage did he indicate that he was bringing meat into Canada. Normally, such evidence would be all that is required from the Agency to prove that Hassan was given a reasonable opportunity to declare the products or to produce a certificate, document or permit, which would permit importation of a meat product. In this case, there is also evidence at Tab 2 of the Agency Report and from the oral testimony of Inspector 25580 that she had asked Hassan if he had any permits or certificates that would have allowed for the importation of the meat and that Hassan had responded in the negative.

[34] There remains, however, the explanation raised by Hassan in his Request for Review and alluded to by Inspector 25580, that Hassan's brother put the pastrami in the bags of Hassan. In other cases where similar allegations have been presented, such as in *Castillo v. Canada (CBSA)*, 2012 CART 17 and *El Kouchi v. Canada (CBSA)*, 2013 CART 14, the Tribunal has held that credible evidence offered by the applicant that the applicant did not know that the questionable product was present in their luggage due to it being surreptitiously planted there (even if the source of the product happened to be a well-intentioned family member) would be sufficient to thwart the Agency's ability to prove this third element, barring the Agency providing evidence upon the balance of probabilities that such evidence was not credible or represented a mere assertion rather than any real proof.

[35] In the present case, the Tribunal is not convinced in Hassan's assertion that his brother put the meat in his luggage and that Hassan did not have knowledge that his brother had so acted. The evidence offered by Inspector 25580 regarding Hassan's behaviour at the secondary inspection counter did not ring true to someone who is totally surprised when an Agency inspector finds an unknown product in his or her luggage. In this case, the simple bald assertion made by Hassan in his Request for Review is insufficient, on a balance of probabilities, to rebut the Agency inspector's evidence and to support a finding by the Tribunal that Hassan did not know that he was importing pastrami into Canada. Agency Inspector 25580, in her very credible testimony, told the Tribunal that Hassan displayed no surprise when she found the meat in his luggage and only mentioned offhandedly, at the time of the secondary inspection, that his brother had packed it in his luggage. Inspector 25580 testified that Hassan's behaviour was not of surprise, but rather of agitation and withdrawal. Perhaps had Hassan provided oral testimony, he might have been able to provide more details to the Tribunal as to how his bags were actually packed when he was leaving Egypt. As it is, the evidence of Hassan is insufficient, even if the Tribunal were able to find it credible. The Tribunal accepts the Agency's evidence in proving the third element of the violation, that it afforded a reasonable opportunity to Hassan to meet Part IV of the Regulations requirements.

[36] The Tribunal also finds as fact, that the evidence presented by both parties does not support any finding by the Tribunal that Hassan actually had such a permit or certificate in his possession on May 31, 2012, or that Agency officials failed to give him a reasonable opportunity to justify the importation in accordance with Part IV of the *Health of Animals Regulations*.

[37] The Tribunal is aware that the Act creates a liability regime that permits few tolerances, as it allows no defence of due diligence or mistake of fact. Section 18 of the Act states:

> **18.** (1) *A person named in a notice of violation does not have a defence by reason that the person*
>
> *(a) exercised due diligence to prevent the violation; or*
>
> *(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.*

[38] When an administrative monetary penalties provision has been enacted for a particular violation, as is the case for section 40 of the *Health of Animals Regulations*, there is little room to mount a defence. In the present case, section 18 of the Act also excludes practically any excuse that Hassan may raise, such as him or his brother not knowing they were breaking the law, that neither had intended to break the law, or that he had never previously broken the law. Given Parliament's clear stance on the issue, as provided by the AMP legislation, the Tribunal accepts that none of the statements made by Hassan in his submissions to this Tribunal and in his communications with Agency inspectors are permitted defences under section 18. Finally, the Tribunal is not empowered under its enabling legislation to consider arguments from the parties based on compassionate and humanitarian considerations, which might have the effect of eliminating, reducing, or providing a payment plan for the fine as set out in a Notice of Violation.

[39] The Tribunal appreciates that Agency inspectors are charged with the important task of protecting individuals, animals, and plants, agricultural production and the food system in Canada from risks posed by pests, pathogens and parasites. There is no doubt that these tasks must be carried out conscientiously. Furthermore, the Tribunal knows that the Agency has established its own process for handling travellers' complaints against Agency inspectors. There was no evidence presented in this case showing that Hassan had pursued this avenue, nor was there any evidence presented by the parties that the inspector's conduct in this case was in any way inappropriate.

Conclusion

[40] The Tribunal finds that the Agency has proven, on a balance of probabilities, each of the necessary elements necessary to prove that Hassan has committed the violation set out in Notice of Violation 3961-12-M-0160 dated May 31, 2012. The Tribunal, therefore further finds that Hassan committed the violation and is liable for payment of the penalty in the amount of $800.00 to the respondent within thirty (30) days after the day on which this decision is served.

[41] The Tribunal wishes to inform Mr. Hassan that this is not a criminal or a federal offence but a monetary violation, and that he has the right to apply after five years to have the notation of this violation removed from the Minister's records, in accordance with subsection 23(1) of the Act, which states as follows:

> **23.** (1) *Any notation of a violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from*
>
> (a) *where the notice of violation contained a warning, the date the notice was served, or*
>
> (b) *in any other case, the payment of any debt referred to in subsection 15(1),*
>
> *unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.*

Dated at Ottawa, Ontario, this 8th day of October, 2013.

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Dr. Don Buckingham, Chairperson