

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: *Castillo v. Canada (Canada Border Services Agency)*, 2013 CART 36

Date: 20131128
Docket: CART/CRAC-1748

BETWEEN:

Mario Castillo, Applicant

- and -

Canada Border Services Agency, Respondent

BEFORE: Chairperson Donald Buckingham

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 directions from the Federal Court of Appeal, as set out in its decision of November 20, 2013, in *Canada Border Services Agency v. Mario Castillo* (2013 FCA 271; FCA File A-55-13), the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant committed the violation and is liable to pay the respondent a monetary penalty of \$ 800.00 within thirty (30) days after the day on which this decision is served.

For reconsideration from the Federal Court of Appeal
As per its decision dated November 20, 2013.

REASONS

Alleged Incident and Issues

[2] The respondent, the Canada Border Services Agency (Agency), sought judicial review before the Federal Court of Appeal (FCA) of the decision of the Tribunal dated November 2, 2012, in the matter of *Mario Castillo v. Canada Border Services Agency* (CART/CRAC-1610).

[3] On November 20, 2013, the FCA rendered its decision indicating that “The facts before the Tribunal clearly show that there was an importation by Mr. Castillo of an animal by-product as defined in the *Health of Animals Regulations* to which none of the exceptions set out in within Part IV of these regulations applied.” (paragraph 23 of the FCA decision). For these reasons, the FCA allowed the application for judicial review, quashed the Tribunal’s decision dated November 2, 2012, and remitted the matter back to the Tribunal “for a fresh determination in accordance with these reasons.” (paragraph 27 of the FCA decision).

[4] Given the FCA’s findings, as set out in its decision at paragraph 23, the Tribunal, has reconsidered the matter and finds that the Agency has proved all the elements of the alleged violation. The Tribunal holds, as a result, that Castillo committed the alleged violation of section 40 of the *Health of Animals Regulations*, as set out in the original Notice of Violation YYZ4974-1041, dated January 25, 2012. The Tribunal, accordingly, orders that Castillo is liable for payment of the penalty in the amount of \$800.00 to the Agency within 30 days after the day on which this decision is served.

[5] The Tribunal wishes to inform Castillo that this violation is not a criminal offence. After five years, he will be entitled to apply to the Minister to have the violation removed from its record, in accordance with section 23 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*:

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 28th day of November, 2013.

Dr. Don Buckingham, Chairperson