



Citation: *Mattard v. Canada (Canada Border Services Agency)*, 2013 CART 37

Date: 20131129  
Docket: CART/CRAC-1658

**BETWEEN:**

**Christophe Guy Mattard, Applicant**

**- and -**

**Canada Border Services Agency, Respondent**

[Translation of the official French version]

**BEFORE: Chairperson Donald Buckingham**

**WITH: Christophe Guy Mattard, self-represented; and  
David Davis, counsel for the respondent**

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 relating to a violation of paragraph 40 of the *Health of Animals Regulations*, alleged by the respondent.

**DECISION**

**[1] Following a hearing and review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines on a balance of probabilities that the applicant committed the violation, as described in Notice of Violation #3961-12-M0828, dated August 8, 2012, 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.**

The hearing was held in Montréal, Quebec,  
on Monday, September 16, 2013.

## REASONS

### Alleged incident and issues

[2] At the heart of this dispute are two 250-gram “Bâton de berger”-style sausages from France. The respondent, the Canada Border Services Agency (Agency), submits that, on August 8, 2012, at Pierre-Elleot-Trudeau International Airport (Dorval Airport) in Montréal, Quebec, the applicant, Christophe Guy Mattard (Mattard), imported meat products into Canada, contrary to section 40 of the *Health of Animals Regulations*, from France, a country from which it is illegal 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* (HAR) 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.

[Emphasis added]

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

### **Procedural history**

[5] Notice of Violation #3961-12-M0828, signed by Agency Inspector 25592 and dated August 8, 2012, alleges that, at Dorval Airport, in Quebec, Mattard [TRANSLATION] “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 Monetary Penalties Act* (Act) and section 2 of the *Agriculture and Agri-Food Monetary Penalties Regulations* (Regulations).

[6] On August 8, 2012, the Agency served Mattard personally with a Notice of Violation. The Notice of Violation indicated to Mattard that the alleged violation was a “serious violation” under section 4 of the Regulations, for which a penalty in the amount of \$800.00 was assessed.

[7] In a letter dated August 21, 2012, which the Tribunal received by registered mail on August 24, 2012, Mattard requested a review by the Tribunal (Request for Review) under paragraph 9(2)(c) of the Act. Mattard informed Tribunal staff that he wished to proceed by way of an oral hearing conducted in English, in accordance with subsection 15(1) of the Regulations.

[8] On September 7, 2012, the Agency sent copies of its report (Agency Report) concerning the Notice of Violation to Mattard and to the Tribunal, the latter receiving it that same day.

[9] In a letter dated September 10, 2012, the Tribunal invited Mattard and the Agency to file any additional submissions on or before October 10, 2012. Neither Mattard nor the Agency filed any additional submissions further to this invitation, and no documents were filed by either party at a subsequent time prior to the hearing of the matter.

[10] By letter dated June 26, 2013, the Tribunal notified the parties that the hearing would take place in Montréal, Quebec, on September 16, 2013.

[11] The oral hearing requested by Mattard took place in Montréal, Quebec, on September 16, 2013, with both parties in attendance. Mattard represented himself, while the Agency was represented by David Davis.

## **Evidence**

[12] The evidence presented to the Tribunal in this case consists of written submissions from the Agency (the Notice of Violation and the Agency Report) and from Mattard (the submissions contained in his Request for Review) and oral testimony given by witnesses at the oral hearing. The Agency called one witness, Agency Inspector 25592, while Mattard called one witness, himself, at the oral hearing held on September 16, 2013.

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

- Mattard landed at Dorval Airport from France on August 8, 2012 (Canada Border Services Agency Declaration Card E311 [Declaration Card] at Tab 1 of the Agency Report; oral testimony of Inspector 25592).
- Mattard completed and signed the Declaration Card on August 8, 2012. The Declaration Card was marked “no” 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” (Declaration Card at Tab 1 of the Agency Report; oral testimony of Inspector 25592).
- Mattard was referred to secondary inspection. By way of oral testimony, Inspector 25592 told the Tribunal that, when Mattard reported to the secondary inspection counter, he asked Mattard for his declaration card, passport and driver’s licence. After verifying his identity, Inspector 25592 asked Mr. Mattard whether this was his luggage, whether he had packed it himself and whether he was aware of the contents. Mattard answered the three questions in the affirmative. Inspector 25592 asked Mattard whether there was anything potentially harmful in his luggage. Mattard answered this question in the negative. Inspector 25592 explained to the Tribunal that he found two 250-gram “Bâton de berger”-style sausages when searching Mattard’s luggage. Inspector 25592 stated that when he found the food in Mattard’s luggage there was no visible reaction from Mattard. He was not surprised and seemed to know the food was there. When the inspector asked him why he had not declared it, Mattard replied, [TRANSLATION] “it’s just two sausages”. Finally, the inspector declared that Mattard had not presented a permit for the imported products (“Non-Monetary General Receipt” filled out by Inspector 25592 at Tab 3 of the Agency Report; photo of sausages taken by Inspector 25592 at Tab 4 of the Agency Report; “Inspector’s Non-Compliance Report for Travellers at Points of Entry” at Tab 5 of the Agency Report; oral testimony of Inspector 25592).
- Inspector 25592 acknowledged that, in his experience and given the direction from the Automated Import Reference System (AIRS) of the Canadian Food Inspection Agency (CFIA), the meat products he found in Mattard’s possession were to be refused entry into Canada (AIRS report at Tab 6 of the Agency Report; oral testimony of Inspector 25592).

[14] On cross-examination, Inspector 25592 told the Tribunal that he had found Mattard in front of the baggage carousel and asked him to follow him to secondary inspection. The secondary inspection took place after this incident.

[15] The written evidence, presented by Mattard in his Request for Review and dated August 21, 2012, contained the following statement:

...

[TRANSLATION]

*Following the notice of a point-of-entry violation concerning the possession of two (250g) Bâtons de Berger sausages that I received on August 9. I challenge the acts of which I stand accused;*

*Onboard the airplane, I filled out the declaration card indicating that my luggage contained alcohol and chocolate given to me by my family in France. I knew that it was essential to declare these. However, it completely slipped my mind to declare the sausages. I only remembered when the customs officer opened my suitcase. Preferring to be honest, I immediately told him that there were also two sausages in there.*

*That was when the customs officer gave me an \$800.00 fine. Without listening to my explanations, he told me that importing sausages into Canada was permitted, but that they had to be declared on the airplane. I never had any intention to break the law, and I feel that the sanction I received was disproportionate to the deed.*

...

[16] In his oral testimony, Mattard stated that he travels to France once a year, and that this time, he had forgotten about the sausages in his bags. That was the reason he had not declared them on his Declaration Card. Mattard considers the sanction in this case to be somewhat excessive and does not understand why the inspector did not simply give him a notice with a warning, which he believes would have sufficed. Mattard told the Tribunal that while he was following the inspector from the carousel to the secondary inspection counter, he told him [TRANSLATION], "Oh, yes, I have two sausages in my luggage", before the inspector had even found them.

[17] On cross-examination, Mattard admitted that he had forgotten about the two sausages in his luggage, but that he remembered he had them when the inspector began searching his luggage. In response to a question from the Agency representative, Mattard added that he did not have a permit authorizing him to import the food found in his luggage.

### **Analysis and applicable law**

[18] 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.*

[19] 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.*

[20] 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 . . .*

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

| <b>Section</b> | <b>Section HAR</b> | <b>Short-form description</b>  | <b>Classification</b> |
|----------------|--------------------|--|-----------------------|
| 79.            | 40                 | <i>Import an animal by-product without meeting the prescribed requirements</i> | <i>Serious</i>        |

[22] 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*, 2009 FCA 152, the Federal Court of Appeal (FCA) describes the 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.*

[23] In *Doyon*, the FCA also 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.*

[24] 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.*

[25] Therefore, it is incumbent on the Agency to prove, on a 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 HAR, the Agency must prove the following:

- Mattard is the person who committed the violation;
- Mattard imported an animal by-product, in this case two sausages, into Canada.

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

[27] With respect to the first element, Mattard's identity as the alleged violator is not in dispute. Throughout the secondary inspection process, the identity of Mattard, the alleged violator, and his care, control and ownership of the two sausages, have been proven on a balance of probabilities. The Tribunal finds, as fact, that Mattard was the alleged violator identified by Inspector 25592, and that the food found in his bags can rightly be attributed as belonging to him.

[28] With respect to the second element, the Tribunal accepts as a finding of fact, on a balance of probabilities, that the Agency has established through evidence from Inspector 25592, that was not denied and was even admitted by Mattard, that Mattard imported an animal by-product, in this case two sausages, into Canada on August 8, 2012.

[29] However, 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 HAR. 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 paragraph 41(1)(a) or subsection 41.1(1) of the HAR; or
- the traveller producing a certificate (paragraph 41(1)(b); paragraph 41(1)(c); section 43; section 46), document (subsection 52(1)), or permit (subsection 52(2)) such that the meat product would be permitted to be imported into Canada under Part IV.

[30] Unfortunately, Mattard did not justify the importation in accordance with Part IV of the HAR. He neither declared the animal by-products to the Agency, in writing on his Declaration Card or in person to the primary inspection customs officer, nor produced a certificate, document or permit in accordance with the applicable provisions of Part IV of the HAR. The Tribunal finds as fact that the evidence presented by both parties supports a finding that Mattard did not have such a certificate, permit or document in his possession on August 8, 2012.

[31] 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.*

[32] When an administrative monetary penalties provision has been enacted for a particular violation, as is the case for section 40 of the HAR, there is little room to mount a defence. In this case, section 18 of the Act will exclude practically any excuse that Mattard might raise, such as forgetting to declare the food products verbally or on the Declaration Card, all of which Mattard did verily believe given the evidence presented. However, given Parliament's clear statement on the issue, the Tribunal accepts that none of the statements made by Mattard in his Request for Review or in his communications with the Agency inspectors are permitted defences under section 18.

### **Conclusion**

[33] The Tribunal finds that the Agency has proven, on a balance of probabilities, each of the necessary elements to prove that Mattard has committed the violation set out in Notice of Violation #3961-12-M0828, dated August 8, 2012. The Tribunal therefore further finds that Mattard committed the violation and is liable for the 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.

[34] The Tribunal wishes to inform Mr. Mattard that this is not a criminal or a federal offence, but a monetary violation, and that he has the right to apply after five (5) years to have the notation of this violation removed from the Minister's records, in accordance with subsection 23(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties 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 29th day of November 2013.

---

Dr. Don Buckingham, Chairperson