



Citation: *Soares v. Canada (Canada Border Services Agency)*, 2013 CART 39

Date: 20131217
Docket: CART/CRAC-1745

BETWEEN:

Wendy Huz Nhi Soares, Applicant

- and -

Canada Border Services Agency, Respondent

BEFORE: Chairperson Donald Buckingham

**WITH: Wendy Huz Nhi Soares, self-represented; and
David Davis, representative 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 a violation of section 40 of the *Health of Animals Regulations* alleged by the respondent.

DECISION ON ADMISSIBILITY

[1] The Canada Agricultural Review Tribunal (Tribunal) ORDERS that the application for a review of the Notice of Violation YYZ4974-0803 dated October 9, 2013 requested by the applicant, Ms. Wendy Huz Nhi Soares (Ms. Soares), pursuant to subsection 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (Act), in relation to the Canada Border Services Agency (Agency), alleging that the applicant violated section 40 of the *Health of Animals Regulations*, IS INADMISSIBLE and is, pursuant to this order, DISMISSED.

By written submissions only,
Made between October 9 and November 23, 2013.

REASONS FOR DECISION ON INADMISSIBILITY

[2] In Notice of Violation YYZ4974-0803, dated October 9, 2013, the Agency alleges that, on that date at Toronto, the applicant, Ms. Soares “committed a violation, namely: import an animal by-product, to wit: meat without meeting the prescribed requirements”, contrary to section 40 of the *Health of Animals Regulations* (C.R.C., c. 296). The Agency served the Notice of Violation with Penalty personally on Ms. Soares on October 9, 2013. In the Notice of Violation, Ms. Soares is advised that the alleged violation is a serious violation under section 4 of the Agriculture and Agri-Food Administrative Monetary Penalties Regulations (SOR/2000-187) (Regulations), for which the penalty assigned is the amount of \$800.00.

[3] By undated letter, sent to the Tribunal by fax on October 21, 2013, and then by courier on October 22, 2013, Ms. Soares requested a review by the Tribunal (Request for Review). The original fax of October 21, 2013, consisted of a one-page typed document signed by “Wendy Soares Huz Nhi Soares”. The courier package received by the Tribunal on October 24, 2013, also contained a copy of Ms. Soares’ E311 Customs Declaration Card, which showed no positive declaration was made by Ms. Soares that she was bringing meat into Canada; a copy of the Notice of Violation in question, duly completed; a copy of a Non-Monetary General Receipt, which indicated that undeclared sausage from Portugal had been seized from Ms. Soares, and then destroyed as international waste by the Agency on October 9, 2013; and a half-page handwritten note setting out more details as to the events that transpired on October 9, 2013.

[4] On October 30, 2013, Ms. Lise Sabourin (Ms. Sabourin), Administration, Finance and Registry Services Coordinator of the Tribunal, communicated to Ms. Soares and to the Agency, via letter, requesting that the applicant provide fuller reasons for her Request for Review [*verbatim*] “as the reasons presented do not allow for any relief from the Tribunal. Please find enclosed a copy of *Practice Note 11* and a copy of the *Guide for Self-Represented Litigants*”. The letter also informed Ms. Soares that if the Tribunal did not receive additional information from her by November 15, 2013, the Request for Review might be found to be non-admissible and that Ms. Soares would have to pay the fine set out in the Notice of Violation.

[5] No response was received from Ms. Soares before the November 15, 2013 deadline, and so, a second follow-up letter dated November 19, 2013, was sent by Ms. Sabourin to Ms. Soares, stating that if no response was received from her on or before November 29, 2013, the Tribunal would consider her Request for Review inadmissible, and as a result, her right of review in this matter would be extinguished by a formal order to that effect.

[6] On November 23, 2013, Ms. Soares sent a one-page fax to the Tribunal, which was a copy of the earlier one-page handwritten document included in her courier package to the Tribunal on October 22, 2013, with an additional seven lines attached thereto.

[7] Rule 34 of the *Rules of the Review Tribunal (Agriculture and Agri-Food)* (Rules) states:

...

An applicant who requests a review by the Tribunal must indicate the reasons for the request, the language of preference and, if the notice of violation sets out a penalty, whether or not a hearing is requested.

...

[8] Where the applicant does not meet the requirements of the Act, the Regulations and the Rules, the Tribunal may rule that the applicant's request for review is inadmissible.

[9] The Tribunal has recently addressed admissibility issues in *Tom Wilson v. Canada (Canadian Food Inspection Agency)*, 2013 CART 25. As discussed in paragraph 10 of that decision:

[10] A request for review is a right which Parliament has extended to applicants which allows them, for a very limited expenditure of time and money, to have their Notice of Violation reviewed by an independent body. However, when played out to its full conclusion, including the filing of pleadings, the holding of a hearing and the rendering of a decision, considerable time and money from all parties will be expended. For this reason, legislators have placed some basic requirements on applicants that they must meet for their rights to be preserved. Where the applicant does not meet the requirements of the Act, the Regulations and the Rules, the Tribunal may rule that the applicant's request for review is inadmissible.

[10] In the present case, the Tribunal has attempted, on at least two formal occasions, to encourage Ms. Soares to present reasons in her Request for Review that would meet a threshold of providing some permitted basis upon which the validity of the Notice of Violation might be challenged. However, in her sparse correspondence with the Tribunal, Ms. Soares has presented only the following reasons:

- (a) That she is very sorry that she brought sausages into Canada on October 9, 2013;
- (b) That she didn't know that it was not legal to bring meat into Canada;
- (c) That she promises not be let this situation happen again;
- (d) That she has learned from this experience;
- (e) That the meat she was carrying was given to her by friends;
- (f) That a friend helped her fill out her Customs Declaration form;
- (g) That this is the first time she has done this; and
- (h) That there is financial hardship involved in her paying any fine due as a result of the Notice of Violation.

[11] 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.

[12] 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 for the applicant to mount a defence. Section 18 of the Act excludes many of the common reasons that applicants raise to justify their actions when a Notice of Violation has been issued to them. Given Parliament's clear intention on the issue of prohibited versus permitted defences, the Tribunal finds that none of the reasons given by Ms. Soares in her submissions to this Tribunal, as set out in paragraph 10 above, are permitted defences under section 18 of the Act. With respect to the last reason she gives—financial hardship—the Tribunal notes that it 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.

[13] Therefore, in the Tribunal's view, the current circumstances provide the Tribunal with little other alternative than to hold that the Request for Review by Ms. Soares is inadmissible, and the Tribunal so holds. Consequently, by operation of subsection 9(3) of the Act, Ms. Soares is deemed to have committed the violation particularized in Notice of Violation YYZ4974-0803, issued October 9, 2013. Subsection 9(3) of the Act provides as follows:

(3) Where a person who is served with a notice of violation that sets out a penalty does not pay the penalty in the prescribed time and manner or, where applicable, the lesser amount that may be paid in lieu of the penalty, and does not exercise any right referred to in subsection (2) in the prescribed time and manner, the person is deemed to have committed the violation identified in the notice.

[14] The Tribunal has considered these matters in light of the provisions of the Act, the Regulations, the Rules, applicable jurisprudence and fairness, plus the information provided by parties.

[15] The Tribunal wishes to inform Ms. Soares that this violation is not a criminal offence. After five years, Ms. Soares will be entitled to apply to the Minister to have the violation removed from the records, 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 17th day of December, 2013.

Dr. Don Buckingham, Chairperson