



Citation: *Kobia v. Canada (Canada Border Services Agency)*, 2013 CART 44

Date: 20131231  
Docket: CART/CRAC-1693

**BETWEEN:**

**Achy Roland Kobia, Applicant**

**- and -**

**Canada Border Services Agency, Respondent**

[Translation of the official French version]

**BEFORE: Bruce La Rochelle, Member**

**WITH: Achy Roland Kobia representing himself, co-represented by Lydienne Bombu; and  
David Davis, representing 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**

**[1] Following a hearing and review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant committed the violation, as described in Notice of Violation # 3961-13-M-0014, dated January 12, 2013, 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 Trois-Rivières, Quebec,  
Thursday, December 12, 2013.

## REASONS

### **Alleged Incident and Pertinent Legislation**

[2] The respondent, the Canada Border Services Agency (the Agency), alleges that on January 12, 2013, at P.-E.-Trudeau International Airport in Montreal, Quebec, the applicant, Achy Roland Kobia (Mr. Kobia), imported an animal by-product, specifically meat, contrary to section 40 of the *Health of Animals Regulations*.

[3] The regulatory regime is that of prohibiting the importation of meat or meat by-products into Canada from countries other than the United States, unless an import permit has been obtained. In certain cases, a certificate or other document showing how the meat or meat by-product has been processed may be accepted in place of an import permit. In such cases, the products are permitted to be imported on the basis that the particulars disclosed result in a conclusion that the product would not or would not be likely to introduce particular diseases or contaminants into Canada, and therefore potentially into the Canadian food supply. In addition, an inspector is accorded a particularized discretion to permit the importation of animal by-products, based on reasonable grounds to believe that the importation of the product, "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" (section 41.1(1), *Health of Animals Regulations*).

[4] The roles of the various parties involved in the regulation of food importation, as well as the details of the regulatory regime, are discussed in greater detail in other Tribunal cases, such as *Gebru v. Canada (CBSA)*, 2013 CART 2, particularly at paragraphs 10 to 16 of that decision, and *Lemotomo v. Canada (CBSA)*, 2013 CART 30, particularly at paragraphs 3 and 4.

[5] The Tribunal must determine whether the Agency has established, on the balance of probabilities, all the elements required to support the Notice of Violation and, if Mr. Kobia did import meat into Canada, whether he meets the requirements that would have permitted such importation.

### **Procedural History**

[6] In Notice of Violation 3961-13-M-0014, dated January 12, 2013, the Agency alleges that, on that date, at P.-E.-Trudeau International Airport, Montreal, Quebec, Mr. Kobia committed the following violation, namely [TRANSLATION]: "importation of an animal by-product, to wit, meat, without meeting the prescribed requirements, contrary to section 40 of the *Health of Animals Regulations*". Such action is a violation under section 7(1)(a) 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). The specific item of concern in the current case was approximately 7 kg of fresh turkey.

[7] The Agency served the Notice of Violation personally on Mr. Kobia on January 12, 2013. In the Notice of Violation, Mr. Kobia is advised that the alleged violation is a serious violation under section 4 of the Regulations, for which the penalty assigned is \$800.00. The document also informs Mr. Kobia that the violation is a warning only, with no monetary penalty. Both boxes on the form – the one for a warning *and* the one for a penalty – were checked off. The contradictions will be discussed, *post*.

[8] By letter dated January 31, 2013 and received by the Tribunal by fax the same day, Mr. Kobia requested a review by the Tribunal (Request for Review), by way of oral hearing. By letter to the Tribunal received on February 8, 2013, the Tribunal received a copy of the Request for Review. The Tribunal determined that Mr. Kobia wished the oral hearing to be held in French.

[9] On February 11, 2013, Mr. Kobia's Request for Review was sent to the Agency by email and regular mail. The Agency had until February 26, 2013, to submit its report, in accordance with subsection 36(1) of the *Rules of the Review Tribunal (Agriculture and Agri-Food)* SOR/99-451 (Tribunal Rules).

[10] By letter to the Tribunal dated and received on February 26, 2013, the Agency submitted its report (the Report). In this letter, the Agency advised the Tribunal that the Report had been sent to Mr. Kobia.

[11] By letter dated February 27, 2013, forwarded to the parties by email and regular mail, Mr. Kobia and the Agency were invited to make any additional representations by March 29, 2013. No additional representations were made by either party.

[12] On October 31, 2013, a Notice of Hearing was sent by email and registered mail to Mr. Kobia and the Agency, advising them of a hearing location and hearing date in Trois-Rivières, Quebec, on December 12, 2013. The hearing's location remains the choice of the Tribunal, taking into consideration what is convenient for the parties. Trois-Rivières is Mr. Kobia's hometown. The hearing was held as scheduled.

### **Procedural Deficiencies on the Part of the Applicant: Non Compliance with Document Submission Provisions**

[13] Following his submission by fax of the Request for Review, Mr. Kobia failed to send a copy of it to the Tribunal by registered mail, as required by subsection 14(3) of the Regulations. None of the documents forwarded to the Tribunal were sent in duplicate, as required by Rule 8 of the *Rules of The Tribunal*. In its discretion, and further to Rule 4 of the Tribunal Rules, whereby a defect in form or a technical irregularity may be overlooked by the Tribunal, the Tribunal chose to overlook these defects in Mr. Kobia's request for review.

### **Procedural Deficiencies on the Part of the Respondent: Warning or Penalty**

[14] As referenced *ante*, both boxes on the Notice of Violation form, indicating warning *and* penalty, were checked off. During the hearing, the Agency's representative requested that the form be rectified, to make it clear that Mr. Kobia was liable for a penalty, and not a warning. The Tribunal permitted the Notice of Violation to be rectified, as requested. The rule adopted by the Tribunal relates to whether so acting would prejudice Mr. Kobia. As discussed by Dr. Buckingham, Chairperson of the Tribunal in *Hassan v. Canada (CBSA)*, 2013 CART 32, paragraph 14 (part):

14. ... *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 ....*

[15] Mr. Kobia and the Agency always treated this case as being a Notice of Violation with penalty, rather than a Notice of Violation with warning. For example, Mr. Kobia was upset that he had missed the opportunity to pay half of the penalty, as he indicated in his Request for Review (excerpt, Request for Review, page 3, *verbatim* quote) [TRANSLATION]:

...

*What I deplore as well is the lack of information, further to the Violation. It wasn't until a few days later that I read that within fifteen days from the imposition of the penalty, I could have had the penalty reduced by 50%.*

...

[16] In addition, the Report discusses a violation with penalty, with no mention of a warning. After receiving the Report, Mr. Kobia did not object to its content. The only time the conflicting content in the Notice of Violation was discussed was at the hearing, when the conflict was raised by the Agency's representative.

### **Evidence before the Tribunal**

[17] The evidence before the Tribunal therefore consists of the following:

- (i) Mr. Kobia's Request for Review, submitted on January 31, 2013;
- (ii) The Report, submitted February 26, 2013;
- (iii) The comments by Mr. Kobia and his friend, Ms. Bombu, and by Mr. Davis, representative for the Agency, during the hearing;
- (iv) An Agency witness, Inspector No. 17740, supervisor for the primary and secondary inspection officers during the inspections of Mr. Kobia.

### **Weaknesses in the evidence: written, word-processed statement of officer during secondary inspection; absence of witness**

[18] The Agency relies on a written, word-processed statement by the secondary inspection officer (Report, Tab 2), Officer 25640, in order to establish the actions of the *primary* inspection officer, Officer 17801. What is more, this statement was not signed by the secondary inspection officer. The Agency also stated that the secondary inspection officer would attend the hearing as a witness (Report, page 14, "Witnesses"). Instead of Officer 25640, the Agency presented as its witness, with no notice to Mr. Kobia or to the Tribunal, Officer 17740, the supervisor for Officers 17801 and 25640, who was supervising at the time of the inspections of Mr. Kobia.

[19] The representative for the Agency explained the absence of Officer 25640 by the fact that she was a student and, as such, a term employee. He explained that Officer 17801 was an employee in similar circumstances, and that neither employee was still working for the Agency. The representative indicated that he had tried to contact Officer 25640, without success. These facts were confirmed by the supervisor, Officer 17740, in response to questions asked by the Tribunal. The supervisor also confirmed, in general and in response to the questions asked by the Tribunal, the facts reported by Officer 25640.

[20] The Tribunal is of the opinion that, if the case were not similar to one of "guilty, with an explanation" (to be discussed), in which the salient points were admitted by Mr. Kobia, the Agency would be unable to establish the evidence by way of a typed, unsigned statement of the secondary inspection officer. The situation becomes especially troubling when the secondary inspection officer tried to recount the experiences of the primary inspection officer. The supervisor was unable to confirm several of the facts, for the simple reason that he had not been there. He was only informed by Officer 25640 after the fact. Furthermore, it is not fair or equitable for the Agency to name one witness, only to then change this witness, without advance notice. In other circumstances, the Tribunal could

have emphasized to Mr. Kobia his right to insist on the presence of Officer 25640 (and Officer 17801), by petitioning the Tribunal to issue a summons to appear.

### **Facts Supported by Evidence**

[21] The evidence presented by the parties that was not disputed is as follows:

- a) Upon arriving in Canada from the Ivory Coast, Mr. Kobia stated in writing, on his Customs Declaration Card (form E311), that he was not importing meat or meat by-products into Canada (Report, Tab 1: copy of form E311).
- b) At primary inspection, [TRANSLATION] “the agent at the primary inspection line asked him whether he was bringing back any food in his baggage. He answered in the negative.” (Report, Tab 2: word-processed statement of secondary officer [Statement of secondary officer]; *verbatim* quote).
- c) At secondary inspection, [TRANSLATION] “Before proceeding with the baggage examination, I asked him the three usual questions: ‘Are these your bags, was it you who packed them, do you know the contents?’ The gentleman answered yes to all these questions.” (Statement of secondary officer; *verbatim* quote).
- d) Approximately 7 kg of fresh turkey meat was discovered when Mr. Kobia’s bags were opened (Statement of secondary officer; Request for Review, page 1).
- e) The Automated Import Reference System (AIRS) indicates that the importation of turkey meat from the Ivory Coast must be prohibited (Report, Tab 3, AIRS Report).
- f) Following a discussion with her supervisor, the secondary inspection officer received permission to issue a notice of violation, which was served on Mr. Kobia (Statement of secondary officer; Request for Review, page 2).
- g) A photo was taken of part of the imported meat (Report, Tab 5; turkey identified by Mr. Kobia at the hearing).
- h) The turkey was seized and destroyed (Report, Tab 4; Non-Monetary General Receipt).

[22] The Tribunal notes that the individual who took the photo of the turkey is not identified in the Report. If there is no link between the Report and the photo that the Agency submitted as being part of the Report, the Tribunal may determine that there is a weakness associated with the case: see, for example, *Mak v. Canada (CBSA)*, 2013 CART 11, paragraphs 40 and 45. The weaknesses in the Agency’s evidence were exacerbated when, in the present case, the officer witness did not attend the hearing. This weakness in proof is

not fatal, considering all the circumstances of the case: Mr. Kobia admitted that the photo was an image of turkey that belonged to him, following questions asked by the representative for the Agency and by the Tribunal.

### **Arguments of Mr. Kobia**

[23] The arguments of Mr. Kobia are as follows:

- (i) The officer did not discover the turkey. Rather, Mr. Kobia showed her a [TRANSLATION] “bag of meat” after finding [TRANSLATION] “a few bags of *concons*, sponges and ointments, coming from Africa” (Request for Review, page 1; *verbatim* quote). In her statement, the secondary inspection officer said [TRANSLATION]: “When his suitcases were opened, I noticed that the gentleman was bringing back with him about 7 kg of fresh turkey meat...” (Statement of secondary officer; *verbatim* quote).
- (ii) This was only the second time that Mr. Kobia had entered Canada by air (Request for Review, page 2). Before completing form E311, Mr. Kobia [TRANSLATION] “asked one of the flight attendants for information. She asked me whether I had any products intended for resale. I said no, everything was for personal consumption. That’s when she told me to check off the “no” box, and that’s what I did...” (Request for Review, page 2; *verbatim* quote).
- (iii) There was a lack of information, since Mr. Kobia did not have the chance to pay a penalty of \$400 instead of \$800 (Request for Review, page 3).
- (iv) Mr. Kobia is asking for clemency, [TRANSLATION] “since the product was thrown out at Customs” (Request for Review, page 3; *verbatim* quote).

### **Assessment of Mr. Kobia’s Arguments**

[24] Mr. Kobia has presented no argument offering a defence against the Notice of Violation. The fact that he showed the turkey to the officer is not relevant. As soon as he entered secondary inspection, the importation had already occurred. See, for example, the facts in *Canada (Food Inspection Agency) v. Westphal-Larsen*, 2003 FCA 383, paragraph 1. The fact that Mr. Kobia was misinformed by a flight attendant about the law and the importation of meat is not relevant. Mr. Kobia feels that there was a lack of information and that he did not understand the fact that he had only a certain amount of time in which to pay half of the penalty, as indicated on the Notice of Violation. Also, with this type of monetary penalty, the Tribunal has no jurisdiction to reduce the amount for any reason, including clemency considerations.

[25] Mr. Kobia is obliged to inform himself, and remains with few defences in relation to whether he committed the violation, according to section 18 of the Act.

*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.*

*(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an agri-food Act applies in respect of a violation to the extent that it is not inconsistent with this Act.*

In the present case before the Tribunal, there is no common law defence, which is primarily associated with impairment of volition, such as insanity or automatism. The Tribunal discussed these defences in detail in *Ziha v. Canada (CBSA)*, 2013 CART 13, at paragraphs 29 to 32.

[26] Mr. Kobia pleads, as defences, his ignorance of the law and the incorrect advice of a flight attendant. He admits to having imported a bag of fresh meat. The Tribunal considers this written admission as a form of what is sometimes referred to in criminal law as a plea of “guilty, with an explanation.” This type of plea is not admissible in criminal law. The admissible plea is generally “guilty” or “not guilty.” See, for example, the decision of *R v. Lambrecht*, 2008 CanLII 14892 (ON SC), at paragraph 33. In the present case before the Tribunal, there is an “admission, with an explanation” on the part of Mr. Kobia. In this case, he admits the relevant facts: importation of meat from the Ivory Coast, contrary to form E311, which Mr. Kobia completed and contrary to Canadian laws concerning the importation of meat. The Tribunal submits that this statement may be treated as similar to an admission of having committed the violation, since the explanations provided by Mr. Kobia do not constitute a defences that are recognized under the Act.

[27] The Tribunal notes that, in the current and in a number of previous cases, an applicant has not provided reasons, at the time of submission of the Request for Review, which would constitute a defence recognized under the Act. The provisions of Tribunal Rule 34 must be considered by the Tribunal, when it assesses the initial admissibility of a Request for Review. Rule 34 reads as follows:

*34. 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.*



[28] If, in submitting a Request for Review, an applicant fails to provide reasons, as recognized under section 18 of the Act, referenced *ante*, and as required by Rule 34, the applicant risks being subject to a finding by the Tribunal that the Request for Review is inadmissible. Reference is made to paragraph 3.3 of the Tribunal's *Practice Note #11 - Determining Admissibility of Requests for Review and Practices Regarding the Exchange of Documents Amongst Applicants, Respondents and the Tribunal*, issued on May 1, 2013, in which the Tribunal emphasizes the need to provide reasons recognized in law. Presenting reasons that are not so recognized is tantamount to an absence of reasons. See, for example, *Wilson v. Canada (CFIA)*, 2013 CART 25 and *Soares v. Canada (CBSA)*, 2013 CART 39.

[29] In the Tribunal's view, this case exemplifies why the Tribunal has considered it advisable to issue Practice Note #11. Clearly, it is in the public interest, and in the parties' interests, relative to hearing costs and the related time and expenditure of resources (by the Agency, Mr. Kobia and the Tribunal), that an applicant in a case such as this be compelled to provide reasons at the outset that are recognized under the Act; that which is not the case in the present matter, even though the Tribunal appreciates Mr. Kobia's position as to the severity of the law.

## **Conclusions**

[30] Based on the foregoing analysis, the Tribunal finds that the Agency, principally as a result of the admissions of Mr. Kobia, has succeeded in establishing, on the balance of probabilities, that Mr. Kobia committed the violation, as alleged. Mr. Kobia is accordingly 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.

[31] The Tribunal wishes to inform Mr. Kobia that this is not a criminal or a federal offence but a monetary violation, and that he has the right to apply after 5 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 31<sup>st</sup> day of December, 2013.

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Bruce La Rochelle, Member