



Citation: *Salim v. Canada (Canada Border Services Agency)*, 2014 CART 18

Date: 20140718

Docket: CART/CRAC-1779

BETWEEN:

Muhammad Salim, Applicant

- and -

Canada Border Services Agency, Respondent

BEFORE: Chairperson Donald Buckingham

**WITH: Muhammad Bilal, representative for the applicant; and
Byron Fitzgerald, 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

The Canada Agricultural Review Tribunal (Tribunal) ORDERS that the application for a review of Notice of Violation #4971-14-0427 dated April 11, 2014, requested by the applicant, Mr. Muhammad Salim (Salim), pursuant to subsection 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act), in relation to the Canada Border Services Agency (Agency) alleging that Salim violated section 40 of the *Health of Animals Regulations* (HA Regulations), IS INADMISSIBLE and, pursuant to this order, IS HEREBY DISMISSED.

By written submissions only,
made between April 17 and May 7, 2014.

Reasons for Decision on Inadmissibility

[1] In Notice of Violation #4971-14-0427 dated April 11, 2014, the Agency alleges that, on that date at Lester B. Pearson International Airport in Toronto, Ontario, the applicant, Salim [verbatim] “committed a violation, namely: import an animal by-product, to wit: 13 kg of canned goat-meat, without meeting the prescribed requirements Contrary to section 40 of the *Health of Animals Regulations*”. The Agency served the Notice of Violation with Penalty personally on Salim on April 11, 2014. In the Notice of Violation, Salim is advised that the alleged violation is a serious violation under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AMP Regulations), for which the penalty assigned is \$800.00.

[2] By letter dated April 17, 2014, sent by ordinary mail to the Tribunal, Salim requested a review by the Tribunal (Request for Review). The letter consisted of a one-page typed document bearing his signature and a copy of the Notice of Violation in question, in which Salim requested that the penalty be waived. In the letter, he explained [verbatim] “I plead guilty for my violation and request to you to please consider this as it will surely not happen in the future again.”

[3] On April 30, 2014, Ms. Lise Sabourin (Sabourin), Administration, Finance and Registry Services Coordinator of the Tribunal, communicated to Salim and to the Agency, via letter, requesting that Salim provide fuller reasons for his Request for Review. This letter explained to Salim that [verbatim]

The Canada Agricultural Review Tribunal (Tribunal) has no power to waive penalties under the Agriculture and Agri-Food Administrative Monetary Penalties Act for Notices of Violation validly issued by the Canada Border Services Agency. The Tribunal is prepared however, to receive more information from the applicant as to the events of April 11, 2014, so as to enable it to make a determination of this request for review. All such information must be received by the Tribunal on, or before Friday, May 9, 2014 (17:00). Please consult Practice Note 11 and the Guide for Self-Represented Litigants (copies attached) for further information. Also note that your request for review must be received by the Tribunal by Registered Mail in order to be admissible.

[4] By registered mail dated May 7, 2014, Salim filed a “Request for a review pursuant to the *Agriculture and Agri-Food Administrative Monetary Penalties Act*” form, a duly completed form naming Muhammad Bilal (Bilal) as his representative for the proceeding before the Tribunal, and a one-page typed letter dated May 7, 2014, stating as follows [verbatim]:

The reason I am requesting this review is I have always been a very responsible resident of Canada and I obey all the rules and regulations. Someone from backhome gave me that stuff and that I didn't realize that it is not allowed I brought it here unknowingly. It was never my intention to commit that offence

and I can assure you that this was my first and last mistake and it will never happen again ever. I apologise for any inconvenience that I might have caused due to the offence. Please consider my apology as I can assure it will never be repeated again.

[5] On June 13, 2014, Sabourin communicated again to Salim and to the Agency, via letter, requesting that Salim provide fuller reasons for his Request for Review. This letter explained to Salim that [verbatim]:

*...On April 30, 2014, the Tribunal sent a letter to the parties, inviting the applicant to provide reasons for the request, but that the applicant did not elaborate on the incidents of April 11, 2014. If the Tribunal does not receive more information about the event, which would provide reasons, other than those outlined and prohibited by section 18 of the AMPs Act, the Tribunal will be inclined to make a ruling on inadmissibility of this request for review. Any additional information must be submitted on or before **June 30, 2014, 5:00 p.m. EDT.***

[6] No response was received from Salim on or before the June 30, 2014 deadline, and so, a final follow-up email from Sabourin was sent to Salim's representative, Bilal, on July 2, 2014, inquiring as to whether Salim would be submitting any additional information to the Tribunal. As of July 17, 2014, no response has been received from Salim or Bilal.

[7] Rule 34 of the *Rules of the Review Tribunal (Agriculture and Agri-Food)* (Tribunal 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 AMP Act, the AMP Regulations and the Tribunal Rules, the Tribunal may rule that the applicant's request for review is inadmissible.

[9] The Tribunal has addressed admissibility issues in *Wilson v. Canada (Canadian Food Inspection Agency)*, 2013 CART 25 (*Wilson*) and *Soares v. Canada (Canada Border Services Agency)*, 2013 CART 39. As discussed in paragraph 10 of the *Wilson* 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 three occasions, to encourage Salim to present reasons in his 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 his sparse correspondence with the Tribunal, Salim has presented only the following information:

- (a) That he committed the infraction in bringing in cooked meat into Canada from another country;
- (b) That the importation was unintentional, as he was given the tinned food by a family member and by the time he realized it, it was too late;
- (c) That this will not happen again;
- (d) That he is a very responsible resident of Canada;
- (e) That he did not realize that the meat would not be allowed into Canada; and
- (f) That he requests that his penalty be waived.

[11] The AMP 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 AMP 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 HA Regulations, there is little room for the applicant to mount a defence. Section 18 of the AMP 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 Salim in his limited submissions to this Tribunal, as set out in paragraph 10 above, are permitted defences under section 18 of the AMP Act. With respect to the last reason he gives—waiving the penalty—the Tribunal notes that it is not empowered under its enabling legislation to consider arguments from the parties, based on any grounds including

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 Salim is inadmissible, and the Tribunal so holds. Consequently, by operation of subsection 9(3) of the AMP Act, Salim is deemed to have committed the violation particularized in Notice of Violation #4971-14-0427 dated April 11, 2014. Subsection 9(3) of the AMP 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 AMP Act, the AMP Regulations, the Tribunal Rules, applicable jurisprudence and fairness, plus the information provided by parties.

[15] Moreover, the Tribunal also notes that from the information provided by Salim in his Request for Review, he would have had a very difficult time proving the invalidity of the Notice of Violation in question.

[16] The Tribunal wishes to inform Salim that this violation is not a criminal offence. After five years, Salim will be entitled to apply to the Minister to have the violation removed from the records, in accordance with section 23 of the AMP 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 18th day of July, 2014.

Dr. Don Buckingham, Chairperson