



Citation: *Kor v. Canada (Minister of Agriculture and Agri-Food)*, 2014 CART 21

Date: 20140724
Docket: CART/CRAC-1602

BETWEEN:

David W. Kor, applicant

- and -

Minister of Agriculture and Agri-Food, respondent

BEFORE: Chairperson Donald Buckingham

**WITH: David W. Kor, self-represented; and
Melanie A. Charbonneau, representative for the respondent**

In the matter of an application made by the applicant, pursuant to paragraph 9(2)(b) to the Minister, and pursuant to paragraph 13(2)(b) to the Canada Agricultural Review Tribunal, of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of the facts of a violation of section 39 of the *Plant Protection Regulations*, alleged by the respondent.

DECISION

After consideration of written submissions of the parties and of the April 17, 2014 decision of the Federal Court of Appeal, indexed as *Attorney General of Canada (Canada Border Services Agency) v. Sergiy Vorobyov* (2014 FCA 102; Docket A-557-12), the Canada Agricultural Review Tribunal, by order, refers the applicant's request for review of Notice of Violation #YVR09034, dated July 3, 2011, to the Minister of Agriculture and Agri-Food Canada with an effective date for the applicant's request for review of July 13, 2011.

By written submissions only.

REASONS

[1] On July 3, 2011, Mr. David Kor (Kor) was issued Notice of Violation #YVR09034, which was signed by an official of the Canada Border Services Agency (Agency) for allegedly having violated section 39 of the *Plant Protection Regulations* (PP Regulations) for failing to declare the importation of corn on the cob into Canada as prescribed.

[2] Kor subsequently made a request for a review by the Minister of Notice of Violation #YVR09034, pursuant to rights granted to him under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act).

[3] On December 12, 2011, on Agency letterhead and allegedly for the Minister of Public Safety and Emergency Preparedness, Mr. Mike Milne issued a decision upholding Notice of Violation #YVR09034.

[4] In a letter dated December 16, 2011, further to rights granted to him pursuant to paragraph 13(2)(b) of the AMP Act, Kor made a request to the Canada Agricultural Review Tribunal (Tribunal) for a review of the December 12, 2011 decision of Mr. Mike Milne.

[5] In a letter dated January 9, 2012, a representative of the Agency provided the Tribunal with that Agency's Report concerning this Notice of Violation.

[6] On March 5, 2013, the Tribunal ordered that this case, along with six others, be held in abeyance until the issuance of the decision from the Federal Court of Appeal in the case of *Attorney General of Canada (Canada Border Services Agency) v. Sergiy Vorobyov* (A-557-12, filed December 20, 2012).

[7] In its March 5, 2013 Order, the Tribunal set out the following at paragraphs 2, 3, and 19:

...

[2] The applicants have each received a Notice of Violation from the Canada Border Services Agency pursuant to the Agriculture and Agri-Food Administrative Monetary Penalties Act (AMP Act) alleging that each has violated either the Health of Animals Act or Regulations or the Plant Protection Act or Regulations.

[3] Each of the applicants has requested, pursuant to the Agriculture and Agri-Food Administrative Monetary Penalties Act, for the Minister of Agriculture and Agri-Food to review the facts of the alleged violation, and in each case, the Minister has issued a decision upholding the violation and as alleged. In turn, each of the applicants has brought to this Tribunal an application for the review of the Minister's decision, as is their right pursuant to paragraph 13(2)(b) of the Agriculture and Agri-Food Administrative Monetary Penalties Act in relation to the Minister's finding that the applicants

have violated either the Health of Animals Act or Regulations or the Plant Protection Act or Regulations.

...

[19] The Tribunal is convinced that suspension of the seven cases currently before the Tribunal will not prejudice the applicants, nor will it entail any excessive delay and will avoid a multiplicity of proceedings which in a final assessment will result in the promotion of the most expeditious and inexpensive determination of these seven matters before the Tribunal.

...

[8] On April 17, 2014, the Federal Court of Appeal rendered its decision in *Attorney General of Canada (Canada Border Services Agency) v. Sergiy Vorobyov*, 2014 FCA 102; Docket A-557-12 (*Vorobyov*, 2014 FCA 102). Justice Noël wrote at paragraphs 47 and 48 of the decision:

[47] Given the problem sought to be addressed, a proper exercise of jurisdiction by necessary implication would have been for the Tribunal to refer the respondent's request for a Ministerial review dated June 20, 2011 to the Minister of Agriculture with effect as of that date, so that it may be dealt with by the proper Minister and so as to preserve the respondent's right to seek relief before the Tribunal should the review prove to be unsuccessful. Given that the request for Ministerial review would have been filed before the Minister of Agriculture on June 20, 2011 were it not for the misdirection by the CBSA, it is entirely appropriate to preserve the original date of filing.

[48] I would therefore allow the application for judicial review in part, set aside the decision of the Tribunal declaring the Notice of Violation null and void, and return the matter before the Tribunal with a direction that an order be issued referring the respondent's request for a Ministerial review dated June 20, 2011 to the Minister of Agriculture with effect as of that date."

[9] The present case brought by Kor before this Tribunal to undertake a review of a purported ministerial decision pursuant to paragraph 13(2)(b) of the AMP Act, is the same in several important respects as the one that was before the Federal Court of Appeal in the *Vorobyov*, 2014 FCA 102, except in one regard. Unlike in the *Vorobyov* case, from a review of the file submitted in this case it is not possible for the Tribunal to determine the exact date that Kor filed his initial request for review to the Minister. As that document is not before the Tribunal, the Tribunal holds that it must have borne a date within the prescribed deadlines for launching a valid request before the Minister, or else the Minister would have found the request to be inadmissible. Since Notice of Violation #YVR09034 was delivered to Kor on July 3, 2011, the Tribunal deems, in the absence of evidence to the contrary, that Kor filed his request to the Minister 10 days later, that is on July 13, 2011.

[10] Given the finding of the Federal Court of Appeal in *Vorobyov*, 2014 FCA 102, the Tribunal hereby refers Kor's original request for review of Notice of Violation #YVR09034 dated July 3, 2011 to the Minister of Agriculture and Agri-Food Canada with effect as of a deemed date of filing of July 13, 2011.

Dated at Ottawa, Ontario, this 24th day of July, 2014.

Dr. Don Buckingham, Chairperson