

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: Olutoryor v. Canada (CBSA), 2011 CART 010

Date: 20110727
Docket: CART/CRAC-1555

Between:

Bola Olutoryor, Applicant

- and -

Canada Border Services Agency, Respondent

Before: Chairperson Donald Buckingham

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 review of all written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant committed the violation and is liable for payment of the penalty in the amount of \$200.00 to the respondent within thirty (30) days after the day on which this decision is served.

By written submissions only.

REASONS

Alleged incident and issues

[2] The respondent, the Canada Border Services Agency (Agency), alleges that, on October 26, 2010, at Pearson International Airport in Toronto, Ontario, the applicant, Ms. Olutoryor (Olutoryor), imported meat products into Canada from Spain, a country from which it is unlawful to import meat products unless proper documentation is secured for such importation, contrary to section 40 of the *Health of Animals Regulations*.

[3] The Tribunal must determine whether the Agency has established all the elements required to support the impugned Notice of Violation.

Record and procedural history

[4] Notice of Violation #4974-10-AMPS-0174 dated October 26, 2010, alleges that on that date "at (POE) 497-T3 in the province or territory of Ontario the above named person [Olutoryor], committed a violation, namely: import an animal by-product to wit: chicken, 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 Administrative Monetary Penalties Act* and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

[5] Section 40 of the *Health of Animals Regulations* states as follows:

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.*

[6] The Agency served the Notice of Violation personally on Olutoryor on October 26, 2010. The Notice of Violation indicates to Olutoryor that the alleged violation is a serious violation under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, for which the penalty assigned is in the amount of \$200.00

[7] By letter dated November 12, 2010, and received by the Tribunal November 26, 2010, Olutoryor filed her request to the Tribunal for a review of the facts of the violation, in accordance with paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. Tribunal staff confirmed by telephone, the same day, that Olutoryor wished to proceed with a review by way of written submissions alone. The Tribunal has, therefore, conducted its review on the basis of all written submissions presented to the Tribunal by the parties.

[8] By letter dated December 8, 2010, which was received by the Tribunal on December 10, 2010, the Agency filed its Report with the Tribunal and with Olutoryor.

[9] In a letter dated December 13, 2010, the Tribunal invited Olutoryor to file with it any additional statements in the matter, no later than January 12, 2011. However, no further written submissions were received from Olutoryor or from the Agency in this matter.

Evidence

[10] The evidence before the Tribunal in this case consists of written submissions from both the Agency (the Notice of Violation and its Report) and from Olutoryor (her request for review).

[11] The Agency, through its Report, presented the following evidence:

- Olutoryor flew from Spain to Canada on flight DL6403 on October 26, 2010 landing at Pearson International Airport in Toronto (Tab 2 of Agency Report - E311(09) Declaration Card signed by Olutoryor).
- Olutoryor completed a Canada Customs Declaration Card E311 dated October 26, 2010, and signed it. The box "No" was checked 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" (Tab 2 of Agency Report - E311(09) Declaration Card signed by Olutoryor).
- Olutoryor proceeded through Canada Customs in Toronto after she disembarked from her plane. Olutoryor completed primary inspection but was then directed to secondary inspection. The officer who completed the secondary inspection has signed a statement wherein she states she asked the passenger if the suitcase was hers and the passenger said "yes". The officer also states that she asked for permits and certificates and none were produced for the meat product and so they were seized and options explained to the passenger. (Tab 6 of Agency Report - Inspector's Non-Compliance Report for Travellers at Points of Entry CBSA Form 142(05)).

- The meat products found in Olutoryor's bags were photographed (Tab 7 of the Agency Report – Photos) and Agent 20109 made the following declaration “I have inspected the imported chicken with no documentation, and I am unable to satisfy myself on reasonable grounds that it was processed in any way that would prevent disease from coming into Canada, and the passenger did not give any valid reason for not declaring.” (Tab 6 of Agency Report - Inspector's Non-Compliance Report for Travellers at Points of Entry CBSA Form 142(05))
- It is unlawful to import chicken or chicken products from Spain unless proper documentation is secured for such importation and Olutoryor presented no such documentation to Agency officials on October 26, 2010, or any time thereafter (Tab 6 of Agency Report - Inspector's Non-Compliance Report for Travellers at Points of Entry CBSA Form 142(05) and Tab 9 of Agency Report - Automated Import Reference System (AIRS) report for chicken meat).

[12] Olutoryor stated in her submissions in her request for review that she is a York university student and a single mother with three children. During her reading week, she went from Canada to visit her younger brother, who resides in Spain, and upon her return, her sister-in-law in Spain packed some fried chicken for Olutoryor, since she had not eaten on the morning of her departure. Olutoryor stated that she kept the chicken she did not eat for her children and for her friend who was looking after her children while she was in Spain. Olutoryor states that when the customs officer found these chicken leftovers, she begged the officer not to throw them into the garbage, but the customs officer said meat was not allowed into Canada. Olutoryor concludes her request as follows: “Am pleading for the fine to be revoked, under compassionate grounds, am student I don’t have provision for such fine. I do hope this case will be treated with mercy.” Olutoryor also stated that “She [the customs officer] ask me to give her credit card, I told her I don’t have, I try to plead with the officer that was with her, the officer told me not to speak to him. They both told me collection agency will come after me. When I was going the papers [sic] given to me at home I discover that I have the right of dispute. I just wonder why the officer didn’t inform me of this rather than informing me of collection agency.”

Analysis and Applicable Law

[13] This Tribunal's mandate is to determine the validity of agriculture and agri-food administrative monetary penalties issued under the authority of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (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.*

[14] Section 2 of the Act defines "agri-food Act":

2. *In this 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;

[15] Pursuant to section 4 of the Act, the Minister of Agriculture and Agri-Food, or the Minister of Health depending on the circumstances, may make regulations:

4. (1) *The Minister may make regulations*

(a) 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

[16] The Minister of Agriculture and Agri-Food has made one such regulation, the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* SOR/2000-187, which designates as a violation several 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 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* and include a reference to section 40 of the *Health of Animals Regulations*.

[17] The Act's system of administrative monetary penalties (AMP), as set out by Parliament is, however, very strict in its application. In *Doyon v. Attorney General of Canada*, 2009 FCA 152, the Federal Court of Appeal describes the AMP system as follow, 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.*

[18] 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.

[19] When an AMP provision has been enacted for a particular violation, as is the case for section 40 of the *Health of Animals Regulations*, Olutoryor has little room to mount a defence. In the present case, section 18 of the Act will exclude practically any excuse that she might raise, such as she misunderstood the Canada Customs Declaration Card E311, that her sister-in-law packed the chicken in her luggage, with or without her knowledge, or that she simply forgot to declare or present any food product to the inspector, as is required.

[20] Given Parliament's clear statement on the issue, the Tribunal accepts that none of the statements made by Olutoryor in her request for review would be permitted defences under section 18.

[21] However, the Federal Court of Appeal, in *Doyon*, 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.*

[22] 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.*

[23] The strictness of the AMP system reasonably must apply to both Olutoryor and the Agency. Therefore, it is incumbent on the Agency to prove, on the balance of probabilities, all the elements of the violation that form the basis of the Notice of Violation.

[24] The Tribunal finds that the Agency has proven every element of the violation set out in the Notice of Violation. The identity of the alleged violator is not in dispute. The Tribunal accepts that the agent asked Olutoryor if the bag in which the meat was found was hers and she responded that it was. Agent 20109 found chicken meat in Olutoryor's bag that she brought from Spain. Olutoryor had no documentation which would have permitted her to import such meat.

[25] The Act's system of administrative monetary penalties (AMP), as set out by Parliament, provides for hard justice to protect Canada's agriculture and food systems from contamination and disease. Still, the Act's fines, in individual cases like the present one, can have a harsh impact on a university student who is the single mother of three children. Olutoryor asks this Tribunal for the fine to be revoked in these circumstances, on compassionate grounds and that the case be treated with mercy. Unfortunately, once the elements of the alleged violation have been proved on the balance of probabilities by the Agency, the Tribunal has no power to do anything other than to uphold the Notice of Violation and order that the person pay the penalty as set out in the Notice of Violation.

[26] Agency inspectors are charged with the task of protecting Canadians, the food chain and agricultural production in Canada from risks posed by biological threats to plants, animals and humans. These duties, no doubt, must be exercised responsibly. The Tribunal is aware that the Agency has its own procedure for reviewing travellers' complaints against inspectors, where the actions of inspectors become excessive towards the travelling public. Whether this was such a case is not for this Tribunal to determine. Moreover, the Tribunal's jurisdiction to review Notices of Violation comes from its empowering legislation. According to these laws, the Tribunal does not have the mandate, nor the jurisdiction, to cancel, annul or dismiss a Notice of Violation for reasons relating solely to the conduct of Agency inspectors towards an applicant or on compassionate grounds.

[27] The Tribunal therefore finds, following a review of all written submissions of the parties, that Olutoryor committed the violation and is liable for payment of the penalty in the amount of \$200.00 to the respondent within thirty (30) days after the day on which this decision is served.

[28] The Tribunal wishes to point out to Ms. Olutoryor that this is not a criminal or a federal offence but a monetary violation, and that she 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 *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 this 27th day of July, 2011.

Dr. Donald Buckingham, Chairperson