

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: Georges Tamdjou Kamtamdjou v. Canada (CBSA), 2012 CART 3

Date: 20120213
Docket: CART/CRAC-1570

Between:

Georges Tamdjou Kamtamdjou, Applicant

– and –

Canada (Canada Border Services Agency), Respondent

[Translation of the official French version]

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 the facts of a violation of section 39 of the *Plant Protection Regulations*, alleged by the respondent.

DECISION

[1] Following a review of all of the written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant committed the violation and is liable to pay the respondent a monetary penalty of \$800 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 March 17, 2011, at Pierre-Elliott-Trudeau International Airport in Dorval, Quebec, the applicant, Georges Tamdjou Kamtamdjou (Mr. Kamtamdjou), failed to declare plants, thus contravening section 39 of the *Plant Protection Regulations*.

[3] Section 39 of these Regulations reads as follows:

39. Every person shall, at the time of importation into Canada of any thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest, declare that thing to an inspector or customs officer at a place of entry set out in subsection 40(1).

[4] The Tribunal must determine whether the Agency has established all of the elements in support of the Notice of Violation in issue and, more specifically, whether

- Mr. Kamtamdjou had plant material in his luggage when he entered Canada;
- The plant material in the form of plant products, which was found in plastic bags, was or could have been infested or constituted or could have constituted a biological obstacle to the control of a pest;
- Mr. Kamtamdjou failed to declare this material to the Agency's inspector on March 17, 2011.

Procedural history

[5] In Notice of Violation #3961-11-M-0089, dated March 17, 2011, it is alleged that, on that day at 7:50 p.m. in Montréal (Dorval), Quebec, Mr. Kamtamdjou [TRANSLATION] "committed a violation, namely, failure to declare plant material with soil attached, contrary to section 39 of the *Plant Protection Regulations*. Import of garlic, fresh herbs and root vegetables with soil attached".

[6] The Notice of Violation also states that the alleged act is contrary to 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* and that, in accordance with section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, this is a serious violation for which a fine of \$800 is imposed on Mr. Kamtamdjou. The Notice of Violation indicates that it was served by the Agency on Mr. Kamtamdjou personally on March 17, 2011.

[7] In a letter dated March 18, 2011, and received by the Tribunal on March 21, 2011, Mr. Kamtamdjou made a request under paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* for the Tribunal to review the facts of the violation. Subsequently, Tribunal staff confirmed with the applicant that he wanted a review by written submissions only. The Tribunal, therefore, conducted this review on the basis of all of the written submissions it received from the parties.

[8] On March 29, 2011, the Agency sent its report (Report) regarding the Notice of Violation to Mr. Kamtamdjou and to the Tribunal, which received it the same day.

[9] In a letter dated March 30, 2011, the Tribunal asked Mr. Kamtamdjou to respond to the Report and send the Tribunal any additional submissions (Additional Submissions) related to this case by no later than April 29, 2011. Neither Mr. Kamtamdjou nor the Agency filed any other material in this case.

Evidence

[10] In this case, the evidence submitted to the Tribunal consists of the Agency's written submissions (the Notice of Violation and the Report) and Mr. Kamtamdjou's written submissions, which are set out in his request for review.

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

- Mr. Kamtamdjou arrived in Canada on board flight AF 346, from Cameroon, via France, on March 17, 2011. His flight landed at Pierre-Elliott-Trudeau International Airport in Montréal (Dorval), as indicated at Tab 2 of the Agency's Report – Declaration Card E311(09) signed by Mr. Kamtamdjou.
- Mr. Kamtamdjou filled out and signed the Canada Border Services Agency's Declaration Card (E311), dated March 17, 2011. He answered "no" to 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 the Agency's Report – Declaration Card E311(09) signed by Mr. Kamtamdjou).
- Mr. Kamtamdjou reported to the Canada Border Services Agency in Montréal (Dorval) upon deplaning. He completed the primary inspection, but was required to undergo a secondary inspection. Officer 18782, who conducted the secondary inspection, signed a declaration in which she stated that Mr. Kamtamdjou had in his possession [TRANSLATION] "PLANT products soil attached" and asked the applicant whether the suitcase belonged to him, to which Mr. Kamtamdjou replied in the affirmative. The

Officer also stated that she asked him for the required permits and certificates, but that none were produced for the plant product. This product was therefore seized and destroyed. (Tab 2 of the Agency's Report, first page, and Tab 7 of the Agency's Report – Form CBSA 142(05) – Inspector's Non Compliance Report for Travellers at Points of Entry, final page).

- The plant products found in Mr. Kamtamdjou's luggage were photographed (Tab 6 of the Agency's Report – Photos) by Officer 18782. She noted that she had found [TRANSLATION] "1.25 kg . . . garlic, potatoes, herbs" (Tab 5, Agency's Report – Tag for intercepted item(s) – Form BSF 156), including [TRANSLATION] "1 kg of potatoes (soil attached), 0.2 kg garlic, 0.05 kg fresh herbs (soil attached) . . . distributed within the suitcases, wrapped in parchment paper and plastic bags" (Tab 7 of the Agency's Report – Form CBSA 142(05) – Inspector's Non Compliance Report for Travellers at Points of Entry).
- The plant products found in Mr. Kamtamdjou's luggage, especially those with soil attached, are inadmissible to Canada unless the required permits and certificates are obtained from the Canadian authorities before these products are imported into Canada (Tab 10 of the Agency's Report – Automated Import Reference System (AIRS) report for chicken meat).
- All of the conversations that took place during the secondary inspection took place in French and without incident (Tab 7 of the Agency's Report – Form CBSA 142(05) – Inspector's Non-Compliance Report for Travellers at Points of Entry).

[12] In his submissions in his request for review, Mr. Kamtamdjou stated the following [TRANSLATION]:

- Although I obviously did all of the acts of which I stand accused, I plead good faith, an excuse.
- Most of the products I was transporting did not belong to me. I was bringing, to close friends, food that their mother, grandmother had strongly insisted that I transport.
- I have been a permanent resident of Canada for only four months and was not aware that these products are dangerous.
- In my current financial situation, I am unable to pay such a penalty.
- In short, I violated the regulations by wanting to help people who are dear to me. Although I acknowledge that I was at fault, I apologize and ask that you drop the charges.

Analysis and applicable law

[13] The Tribunal's role is to determine the validity of agriculture and agri-food administrative monetary penalties imposed under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (the Act). Section 3 sets out the purpose of the Act:

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” as follows:

2. “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] Section 4 of the Act provides that the Minister of Agriculture and Agri-Food or the Minister of Health, depending on the circumstances, may do the following:

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 made those regulations, that is, the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, SOR/2000-187, which define, as a violation, the contravention of a number of express provisions of the *Health of Animals Act* and Regulations and the *Plant Protection Act* and Regulations. Those violations, listed in Schedule 1 to the *Agri-Food Administrative Monetary Penalties Regulations*, refer to section 39 of the *Plant Protection Regulations*.

[17] The Federal Court of Appeal has made observations on the Administrative Monetary Penalty (AMP) system under the Act and its strictness. In *Doyon v. Attorney General of Canada*, 2009 FCA 152, the Federal Court of Appeal stated the following 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] In *Doyon*, the Federal Court of Appeal also stressed that the Act places a heavy burden on the Agency. At paragraph 20, the Court stated the following:

[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.*

[19] Parliament clearly states that the respondent has the burden of proving every element of the violation, as set out at section 19 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*:

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.*

[20] Therefore, the Agency must prove every element of the violation on a balance of probabilities. In the case of a violation of section 39 of the *Plant Protection Regulations*, the Agency must prove the following:

- (1) Mr. Kamtamdjou is the person who committed the violation;
- (2) Mr. Kamtamdjou brought (imported) the plant material at issue into Canada;
- (3) The imported plant material was or could have been infested or constituted or could have constituted a biological obstacle to the control of a pest;
- (4) Mr. Kamtamdjou did not declare this material to an Agency inspector.

[21] The Agency filed evidence, and Mr. Kamtamdjou did not contradict it. He even admitted having imported plant material, with soil attached, without having declared them during the primary inspection. Therefore, the Tribunal finds that the Agency has proven, on a balance of probabilities, the first, second and fourth elements of the alleged violation.

[22] Regarding the third element, Officer 18782 testified, on the Agency's behalf, that the plant material she had found in the applicant's luggage consisted of edible plants with soil attached. Referring to the AIRS system for the import of such products, she concluded that these products did indeed have to be declared because they were "... [a] thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest ..." (section 39 of the *Plant Protection Regulations*). Furthermore, regarding this element, the Tribunal is satisfied that the Agency has provided sufficient evidence, on a balance of probabilities, for the Tribunal to deem that each of the plants thus imported should be declared "... [a] thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest ...".

[23] The Act creates a near-absolute liability scheme because it does not allow the defence of having exercised due diligence to prevent the violation or of having made a mistake of fact. Section 18 of the Act reads as follows:

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.

[24] In the event that a provision setting out AMPs has been adopted for a specific violation, as one has been for section 39 of the *Plant Protection Regulations*, Mr. Kamtamdjou has very few defences. In the present case, section 18 of the Act excludes almost every excuse that may be raised, such as [TRANSLATION] "Most of the products I was transporting did not belong to me. I was bringing, to close friends, food that their mother, grandmother had strongly insisted that I transport" or "I have been a permanent resident of Canada for only four months and was not aware that these products are dangerous". Considering Parliament's clearly expressed intention on this question, the Tribunal acknowledges that none of the statements made or not made by Mr. Kamtamdjou in his request for review can be used as a defence, in accordance with section 18.

[25] The Tribunal is of the opinion that the Agency has established all of the elements of the violation set out in the Notice of Violation. The identity of the person who presumably committed the violation is not in question. The Tribunal's view is that Mr. Kamtamdjou did not declare his plant material before he went through the secondary inspection and that this plant material was "... [a] thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest ...".

[26] The very strict AMP system established by Parliament and set out in the Act protects Canada's agricultural and food systems against contamination and disease. The penalties set out in the Act, as in this case, may nonetheless have severe financial repercussions for someone newly arrived in Canada who has imported food for friends. It seems that Mr. Kamtamdjou is asking the Tribunal to waive, for financial reasons, the penalty imposed in this case and to show clemency by setting aside the \$800 fine. Unfortunately, once the Agency has established the facts of the alleged violation on a balance of probabilities, the Tribunal's power is limited to confirming the Notice of Violation and ordering the offender to pay the fine specified in the Notice of Violation.

[27] The Agency's inspectors are tasked with protecting Canadians, the food chain and agricultural production in Canada from the 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 handling traveller complaints against inspectors, where the actions of inspectors become excessive towards the travelling public. It is not for the Tribunal to determine whether that was the case here. Furthermore, the Tribunal's jurisdiction to review Notices of Violation comes from its home statutes. According to these statutes, the Tribunal has neither the function nor the jurisdiction to set aside or dismiss a Notice of Violation for reasons relating solely to the conduct of Agency inspectors towards an applicant or for humanitarian or financial reasons.

[28] Consequently, having considered all of the written submissions of the parties, the Tribunal is of the opinion that Mr. Kamtamdjou committed the violation and is liable to pay the respondent a monetary penalty of \$800 within 30 days after this decision is served.

[29] The Tribunal wishes to emphasize to Mr. Kamtamdjou that this violation is neither a criminal offence nor an offence under an Act of Parliament, but an offence punishable by monetary penalty and that, in five years' time, he may apply to the Minister to have the violation removed from his record, in accordance with subsection 23(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. This provision reads 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 13th day of February, 2012.

Dr. Donald Buckingham, Chairperson