



Citation: Ingrid Ng v. Canada (CBSA), 2012 CART 7

Date: 20120327
Docket: CART/CRAC-1600

Between:

Ingrid Ng, 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 \$800.00 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 December 3, 2011, at Vancouver, British Columbia, the applicant, Ms. Ingrid Ng (Ng), imported meat products into Canada contrary to section 40 of the *Health of Animals Regulations*, from Singapore, a country from which it is unlawful to import meat products unless she met the requirements of Part IV – Importation of Animal By-Products, Animal Pathogens and Other Things – of the *Health of Animals Regulations*.

[3] Pertinent sections of the *Health of Animals Regulations* state as follow:

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.*

41. (1) *A person may import into Canada an animal by-product, manure or a thing containing an animal by-product or manure, other than one described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if*

(a) the country of origin is the United States and the by-product, manure or thing is not derived from an animal of the subfamily Bovinae or Caprinae;

(b) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate of origin signed by an official of the government of that country attesting to that origin; or

(c) the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in a manner that would prevent the introduction into Canada of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate signed by an official of the government of the country of origin that

(i) attests that the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in that manner, and

(ii) shows the details of how it was collected, treated, prepared, processed, stored and handled.

(2) Subsection (1) does not apply in respect of manure found in or on a vehicle that is entering Canada from the United States if the manure was produced by animals, other than swine, that are being transported by the vehicle.

41.1 *(1) Despite section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than one described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if an inspector has reasonable grounds to believe that the importation of the by-product or thing, 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, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product was derived is susceptible and that can be transmitted by the by-product, and the by-product or thing is not intended for use as animal food or as an ingredient in animal food.*

(2) No person shall, in respect of any animal by-product or thing containing an animal by-product that has been imported in accordance with subsection (1), use or cause it to be used as animal food or as an ingredient in animal food.

...

43. *A person may import into Canada cooked, boneless beef from a country or a part of a country not referenced to in section 41 if*

(a) it was processed in a place and in a manner approved by the Minister;

*(b) it is accompanied by a meat inspection certificate of an official veterinarian of the exporting country in a form approved by the Minister;
and*

(c) on examination, an inspector is satisfied that it is thoroughly cooked.

...

46. *No person shall import into Canada meat and bone meal, bone meal, blood meal, tankage (meat meal), feather meal, fish meal or any other product of a rendering plant unless, in addition to the requirements of sections 166 to 171,*

(a) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is susceptible and that can be transmitted by the product, and the person produces a certificate of origin signed by an official of the government of that country attesting to that origin; and

(b) an inspector has reasonable grounds to believe that the product has been processed in a manner that would prevent the introduction of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is susceptible and that can be transmitted by the product.

...

52. *(1) Despite anything in this Part, a person may import into Canada an animal by-product if the person produces a document that shows the details of the treatment of the by-product and an inspector has reasonable grounds to believe – based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, if necessary, on an inspection of the by-product – that the importation of the by-product would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.*

(2) Notwithstanding anything in this Part, a person may import an animal by-product under and in accordance with a permit issued by the Minister under section 160.

[4] The Tribunal must determine whether the Agency has established all the elements required to support the impugned Notice of Violation and that if she did import meat into Canada, if Ng has failed to meet the requirements under Part IV of the *Health of Animals Regulations* that would have permitted such importation.

Procedural history

[5] Notice of Violation YVR010683 dated December 3, 2011, alleges that on that date at Vancouver International Airport, in British Columbia, Ng “committed a violation, namely: import an animal by product, to wit: meat, 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*.

[6] The Agency served the Notice of Violation personally on Ng on December 3, 2011. The Notice of Violation indicates to Ng 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 \$800.00.

[7] By letter dated December 5, 2011 (received by the Tribunal in December 8, 2011), Ng requested a review of the facts of the violation by the Tribunal, in accordance with paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. In her request for review, Ng authorized her daughter Alice Kitty Woei (Woei) to act as her agent and representative in this matter. In her request for review, Ng confirmed that she 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] The Agency sent to the Tribunal and to Woei, part of its report concerning the alleged violation electronically on December 28, 2011, with hard copies of the report and attached additional documents (Report), sent to the Tribunal and to Woei the following day.

[9] On December 30, 2011, the Tribunal invited Woei to respond to the Report and both parties to file any additional submissions in the matter, no later than January 30, 2012. By letter dated January 9, 2012 and received by Tribunal on January 16, 2012, Woei provided the Tribunal with additional submissions (Additional Submissions) concerning this matter. No further submissions were filed by either party in this proceeding.

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 Ng (her request for review and Additional Submissions from Woei).

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

- Ng came to Canada from Singapore on December 3, 2011, landing at Vancouver International Airport (E311 Declaration Card signed by Ng at Tab 1 of Agency Report).
- Ng completed and signed a Canada Border Services Agency Declaration Card E311 dated December 3, 2011. Ng marked "No" 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" (E311 Declaration Card signed by Ng at Tab 1 of Agency Report).

- There is no indication that at primary inspection when she presented her Declaration Card E311, that she made mention verbally of any meat products in her luggage to the inspector.
- While in the baggage pick-up area after primary inspection, Ng was referred to secondary inspection as a result of an alert from Agriculture detector dog Whiskey. Inspector 10743 conducted the secondary inspection of Ng's bag and found "three packages chicken (1350 grams), three packages fish and chicken (849 grams) [, and] one bag sticky rice with chicken (2178 grams)". Inspector 10743 reported that Ng was asked by the inspector if the luggage with her was hers, if she packed it and if she was aware of the contents to which she answered "yes" to all three questions. (Tab 2 of Report – Inspector's Notes made on December 3, 2011; Tab 3 of Report – Tag for intercepted item BSF 156 and Inspector's Non Compliance Report for Travellers at Points of Entry). A photo of the meat products are found at Tab 4 of the Report.
- Inspector 10743 explained that Ng did not have any certificates for the meat products. As a result, the inspector issued Ng a Notice of Violation for the non compliance. The meat products were then seized and destroyed. (Tab 3 of Report – Inspector's Non Compliance Report for Travellers at Points of Entry)
- The Canadian Food Inspection Agency's (CFIA) automated Import Reference System (AIRS) confirmed to the Agency inspector that chicken meat from Singapore is to be prohibited entry into Canada. The AIRS report recommends that the Agency "Refuse Entry" of such products (Tab 6 of Report).

[12] In her submissions to the Tribunal in the request for review, Ng affirms that she arrived in Canada on board flight SQ6300 from Singapore via Hong Kong on December 3, 2011. After disembarking the plane in Vancouver, Ng stated that a security dog approached her trolley and she was then pulled over by security for a scanning process. Ng stated that she was charged with a violation with penalty of \$800 for a left-over sandwich that the inspector found. Ng also set out in her request for review that security also found two types of frozen packages of fishballs.

[13] In her Additional Submissions, Ng's agent, Woei, argues that the animal by-product that her mother brought into Canada cost only about \$30, that it could have been consumed safely as it had a certified stamp on the product showing that it was HACCP & ISO certified, and that three of the seven packages seized contained chicken while the rest contained only sticky rice, vegetables and a Chinese type of shrimp/fish chili padi paste. Moreover, it was not her mother's intention to bring in or import these products to "cause any trouble" as she was not thoroughly familiar with Canadian rules and regulations.

Analysis and Applicable Law

[14] 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.

[15] 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;

[16] 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...

[17] 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*.

[18] The Act's system of administrative monetary penalties (AMP), as set out by Parliament, is 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.*

[19] Moreover, the Federal Court of Appeal, in *Doyon*, 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.*

[20] 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.*

[21] 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. In the case of a violation of section 40 of the *Health of Animals Regulations*, the Agency must prove the following:

- (1) Ng is the person who committed the violation;
- (2) Ng brought (imported) meat or meat products into Canada; and
- (3) if Ng did import meat products into Canada, that Agency officials provided a reasonable opportunity to Ng for her to justify the importation in accordance with Part IV of the *Health of Animals Regulations*.

[22] The Tribunal must consider all the written evidence before it to determine whether the Agency has proven, on the balance of probabilities, all the elements of the alleged violation. With respect to elements 1 and 2, Ng's identity as the alleged violator is not in dispute. Throughout the inspection process, it was never disputed that the bag containing the goods that are the subject of this case belonged to Ng. While Ng maintained in her initial submissions attached to her request for review that she only had a left-over sandwich and some fishballs in her luggage, her later statement, submitted by her agent Woei, suggested that at least three of the seven packages, found by the Agency inspector during the secondary inspection, did contain chicken meat. This evidence, combined with the direct evidence of the Agency Inspector 10743, who documented the finding of chicken meat in Ng's luggage, is to be preferred over that Ng's initial statement that she had no chicken in her bags. The Tribunal finds as a fact that Ng did import chicken meat into Canada in her luggage on December 3, 2011.

[23] With respect to element 3, the Tribunal finds that Ng was given a reasonable opportunity to declare the meat through her E311 Declaration Card. She chose to mark on that card that she was not bringing any meat products into Canada. She might also have informed the primary inspector of the Agency that she had meat products. Either of these declarations might have permitted an Agency inspector the opportunity to inspect the meat products she was bringing into Canada and perhaps have allowed the inspector to permit such importation under section 41.1 of the *Health of Animals Regulations*. She did not exercise that action and in the absence of any official documentation that would have permitted the importation, the Agency inspector, on the basis of the AIRS report issued by the CFIA for chicken meat imported from Singapore, was justified in barring entry to this meat by-product.

[24] Therefore, unless Ng is able to convince the Tribunal of the existence of a defence to the alleged violation, the essential elements of which have been proved by the Agency on the balance of probabilities, then the validity of the Notice of Violation must be upheld by the Tribunal.

Defences

[25] One defence that Ng has raised in her submissions is that she did not intend to do any harm by bringing the products into Canada. This statement or ones like are not allowed defences under the Act. 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.

[26] When an AMP provision has been enacted for a particular violation, as is the case for section 40 of the *Health of Animals Regulations*, Ng 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 did not declare it because the meat was of little economic value, because it was for personal use, because she intended no harm by importing the meat, or because she was unaware of the import laws requiring her to declare the meat.

[27] Given Parliament's clear statement on the issue, the Tribunal accepts that none of the statements, made by Ng in her submissions to this Tribunal or in her communications with the Agency inspector, are permitted defences under section 18.

[28] Ng may, however, defend herself against an alleged violation under section 40 of the *Health of Animals Regulations*, if she could prove that she had, and produced to Agency officials, valid importation documentation. According to section 40, persons are permitted to import meat if they comply with certain requirements found in Part IV – Importation of Animal By-Products, Animal Pathogens and Other Things -- of the *Health of Animals Regulations*. If, for example, the alleged violator presents a permit, document, or certificate, as set out in sections 41, 43, 46 or 52 of the *Health of Animals Regulations*, then that valid documentation would act as a defence against an alleged violation of section 40. The evidence reveals, and the Tribunal finds as fact, however, that Ng did not present to an Agency inspector any documentation that would have satisfied these requirements and, thus, permitted her importing chicken into Canada from Singapore.

[29] Agency inspectors are charged with the important task of protecting Canadians, the food chain and agricultural production in Canada from risks posed by biological threats to plants, animals and humans. The Tribunal's jurisdiction to review Notices of Violation comes from its empowering legislation. According to these laws, the Tribunal must examine the evidence to determine if the Agency has proved, on the balance of probabilities each element for the alleged violation. In this case, the Tribunal concludes that the Agency has done so.

[30] The Tribunal, therefore, finds, following a review of all written submissions of the parties, that Ng committed the violation 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.

[31] The Tribunal wishes to inform Ms. Ng 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 March, 2012.

Dr. Donald Buckingham, Chairperson