



Citation: *Lee v. Canada (Minister of Agriculture and Agri-Food)*, 2014 CART 22

Date: 20140731
Docket: CART/CRAC-1665

BETWEEN:

Joo Yeon Lee, applicant

- and -

Minister of Agriculture and Agri-Food, respondent

BEFORE: Chairperson Donald Buckingham

**WITH: Joo Yeon Lee, 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 34(1)(b) of the *Health of Animals 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 #3961-11-M-0138, dated April 30, 2011, to the Minister of Agriculture and Agri-Food Canada, with an effective date for the applicant's request for review of May 4, 2011.

By written submissions only.

REASONS

[1] On April 30, 2011, Ms. Joo Yeon Lee (Lee) was issued Notice of Violation #3961-11-M-0138, which was signed by an official of the Canada Border Services Agency (Agency) for allegedly having violated section 34(1)(b) of the *Health of Animals Regulations* (HA Regulations) for importing milk products into Canada without meeting the prescribed requirements.

[2] In a letter dated May 4, 2011, and date-stamped as received by the Recourse Directorate of the Agency on May 6, 2011, Lee made a request for a review by the Minister of Notice of Violation #3961-11-M-0138 pursuant to rights granted to her under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act).

[3] On July 31, 2012, on Agency letterhead and allegedly for the Minister of Public Safety and Emergency Preparedness, J. Laurin (Laurin) of the Recourse Directorate of the Agency issued a decision upholding Notice of Violation #3961-11-M-0138.

[4] In a letter dated August 15, 2012, further to rights granted to her pursuant to paragraph 13(2)(b) of the AMP Act, Lee made a request to the Canada Agricultural Review Tribunal (Tribunal) for a review of the July 31, 2012 decision of Laurin.

[5] In a letter dated September 25, 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 FCA 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 Lee 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. From a review of the file submitted in this case, the Tribunal can determine that Lee made her initial request for review to the Minister on May 4, 2011.

[10] Given the finding of the Federal Court of Appeal in *Vorobyov*, 2014 FCA 102, the Tribunal hereby refers Lee's original request for review of Notice of Violation #3961-11-M-0138 dated April 30, 2011, to the Minister of Agriculture and Agri-Food Canada with effect as of May 4, 2011, the date on which her request for review to the Minister was made.

Dated at Ottawa, Ontario, this 31st day of July, 2014.

Dr. Don Buckingham, Chairperson