



Citation: *Abla v. Canada (Minister of Agriculture and Agri-Food)*, 2014 CART 25

Date: 20140731

Docket: CART/CRAC-1671

BETWEEN:

Abdul Rahman Abla, applicant

- and -

Minister of Agriculture and Agri-Food, respondent

[Translation from the official version in French]

BEFORE: Chairperson Donald Buckingham

**WITH: Abdul Rahman Abla, 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 40 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-0413, dated December 10, 2011, to the Minister of Agriculture and Agri-Food with an effective date of December 15, 2011, the date on which the applicant made his initial request for review to the Minister.

By written submissions only.

REASONS

[1] On December 10, 2011, Mr. Abdul Rahman Ablu (Ablu) was issued Notice of Violation # 3961-11-M-0413, which was signed by an official of the Canada Border Services Agency (Agency) for allegedly having violated section 40 of the *Health of Animals Regulations* (HA Regulations) for importing meat products into Canada without meeting the prescribed requirements.

[2] By letter dated December 15, 2011, and received by the Recourse Directorate of the Agency on January 10, 2012, Ablu made a request for a review by the Minister of Notice of Violation #3961-11-M-0413 pursuant to rights granted to him under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act).

[3] On October 3, 2012, on Agency letterhead and allegedly for the Minister of Public Safety and Emergency Preparedness, Mr. Mike A. Milne of the Recourse Directorate of the Agency issued a decision upholding Notice of Violation #3961-11-M-0413.

[4] By registered letter dated October 16, 2012, further to rights granted to him pursuant to paragraph 13(2)(b) of the AMP Act, Ablu made a request to the Canada Agricultural Review Tribunal (Tribunal) for a review of the October 3, 2012 decision of Mr. Mike A. Milne.

[5] In a letter dated November 8, 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 Abia 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 *Vorobyov*, 2014 FCA 102. From a review of the file submitted in this case, the Tribunal can

determine that Ablā filed his initial request for review to the Minister on December 15, 2011.

[10] Given the finding of the Federal Court of Appeal in *Vorobyov*, 2014 FCA 102, the Tribunal hereby refers Ablā's original request for review of Notice of Violation #3961-11-M-0413 dated December 10, 2011 to the Minister of Agriculture and Agri-Food with effect as of December 15, 2011, the date on which his request for review to the Minister was made.

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

Dr. Don Buckingham, Chairperson