

Canada Agricultural  
Review Tribunal



Commission de révision  
agricole du Canada

Citation: Taylor v. Canada (CBSA), 2010 CART 032

Date: 20101216  
Docket: RTA-60390;  
RT-1541

**Between:**

**Garnet Taylor, Applicant**

**- and -**

**Canada Border Services Agency, Respondent**

[Please note that an erratum released on March 22, 2011, is appended at the end of these reasons.]

**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 40 of the *Health of Animals Regulations*, alleged by the respondent.

## **DECISION**

[1] Following an oral hearing and a review of all submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant did not commit the violation and is not liable for the payment of the penalty.

Hearing held in Toronto, ON,

**Canada**

October 1, 2010.

## REASONS

### Alleged incident and issues

[2] The respondent, the Canada Border Services Agency (Agency), alleges that on January 16, 2010, at the J.A. Richardson International Airport in Winnipeg, Manitoba, the applicant, Mr. Garnet Taylor (Taylor), imported meat products into Canada from Jamaica, 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; and
- particularly, if Taylor, the person named in the Notice of Violation, imported into Canada a food product that contained meat.

### Record and procedural history

[4] Notice of Violation YWG-AMPS-72, dated January 16, 2010, alleges that on January 16, 2010, at the J.A. Richardson International Airport in Winnipeg, Manitoba, Taylor “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*”.

[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 sets out in the above-noted Notice of Violation that it served the Notice of Violation personally on Taylor on January 16, 2010.

[7] The Notice of Violation indicates to Taylor 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.

[8] On January 29, 2010, Taylor sent the Tribunal by fax, a request 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*. At that same time, Taylor requested that the review be oral, in accordance with subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. Taylor indicated in his request that he wished to proceed by way of an oral hearing in English.

[9] On February 16, 2010, the Agency sent its report (Report) concerning the Notice of Violation to Taylor and to the Tribunal.

[10] In a letter dated February 17, 2010, the Tribunal invited Taylor to file with it any additional statements in this matter, no later than March 19, 2010. However, no further submissions were received from either of the parties.

[11] The Tribunal informed the parties by a registered letter dated August 16, 2010 that an oral hearing (Notice of Hearing) would be held concerning this matter on October 1, 2010, in Toronto, in the province of Ontario. The tracking record of the registered letter sent to Taylor indicates that Taylor signed for this letter on August 31, 2010.

[12] On October 1, 2010, the Tribunal convened the hearing of this matter at 10:00 a.m., as set out in the Notice of Hearing letter issued to the parties. Taylor failed to appear at that time while the Agency was represented by Ms. Jo-Anne Smith and Mr. Byron Fitzgerald. The Tribunal adjourned until 10:20 a.m. to await the arrival of Taylor, but he never appeared. Consequently, on October 1, 2010, at 10:20 a.m., the Tribunal held the hearing in Taylor's absence in accordance with Rule 41 of the *Rules of the Review Tribunal (Agriculture and Agri-Food)* (Tribunal Rules), satisfied that the Notice of Hearing had been sent to and received by Taylor. (On October 13, 2010, Taylor called the Tribunal to say that he had forgotten about the hearing and wondered if a new hearing could be scheduled, a request which the Tribunal denied.)

[13] At the opening of the hearing, prior to hearing the Agency's case, the Tribunal addressed an additional preliminary issue raised by the Agency. The Agency requested permission to tender three affidavits as evidence. The Tribunal referred the Agency representative to Tribunal Rule 17, which states that "Affidavit evidence is not admissible without the consent of the party against whom the affidavit evidence is tendered." In light of this Rule, the Tribunal asked the Agency if it had been able to secure the agreement of Taylor for the tendering of these affidavits, to which the Agency replied that it had not. Given the choice of adjourning the hearing to seek Taylor's consent or proceeding with the hearing and foregoing the introduction of the affidavits as part of the Agency's evidence, the Agency's representative chose to proceed without the affidavits.

## **Evidence**

[14] Due to the fact that neither party presented witnesses at the hearing, the evidence in this case consists of written submissions from both the Agency (specifically, the Notice of Violation of January 16, 2010 and its Report dated February 16, 2010) and from Taylor (specifically, his request for review faxed to the Tribunal on January 29, 2010).

[15] Certain elements of the evidence are not in dispute:

- Taylor flew from Jamaica to Canada, landing at Winnipeg on January 16, 2010.
- Taylor proceeded through Canada Customs in Winnipeg after he disembarked from his plane.
- Taylor completed a Canada Customs Declaration Card E311 dated January 16, 2010. It was signed by him and 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.”
- Taylor completed primary inspection by the Agency and was directed to submit to secondary inspection.
- Secondary Inspector #11623 completed the secondary inspection of Taylor’s luggage and found 10 kilograms of Jamaican patties in his carry-on luggage.
- It is unlawful to import into Canada meat from Jamaica, unless proper documentation is secured for such importation and Taylor presented no such documentation to agents on January 16, 2010 or any time thereafter.

[16] The only element of evidence that is pivotal to the case and that is in dispute is whether Taylor, as the person named in the Notice of Violation, imported Jamaican patties that contained meat as the Notice of Violation alleges.

[17] Taylor, in direct evidence as part in his request for review, stated that he “would like to appeal the decision made against me for bringing Pattie from Jamaica to CANADA on January 16, 2010 at the Winnipeg INTL Airport while I was trying to get to my destination in Toronto.” In his request for review, he makes no reference to the food product in question as containing “meat” or “meat products”. In terms of demonstrative evidence, the Agency’s Report contains two photos, at Tab 6, of the food product confiscated from Taylor. In the first photo, the product in question appears to be sold under a trade name visible on the product packaging as “Authentic Jamaican patties” or “Juicy Patties”. Again, no mention of the word “meat” or “meat product” is visible on the packaging, although no list of ingredients is visible in the photo. As well, both photos show the actual patties but it is not evident from the photos what the patties actually contain. Finally, by way of indirect evidence, the Report contains the following sentence in its Case Summary at page 11: “Secondary inspector #11623 upon discovering food products in a plastic bag Mr. Taylor hand carried, reviewed the Automated Import Reference System and processed the passenger for Agri-food products. Inspector #11623 asked Mr. Taylor why he did not declare the beef patties. He responded that it wasn’t meat.”

[18] Concerning the question of whether the food products Taylor imported contained meat or not, the Agency presented direct evidence by way of the various reports filed by Inspector #11623 and indirect evidence by way of its Case Summary mentioned above, all of which were included in the Report.

[19] Inspector #11623 completed form BSF 156 “Tag for intercepted item” (Tab 5 of the Report) which lists the confiscated items as being “2 boxes meat patties 10 kg.” with Jamaica as the country of origin of the intercepted package. Inspector #11623 also completed form CBSA 142 “Inspector’s Non Compliance Report for Travellers at Points of Entry” (Tab 7 of the Report) concerning the incident in question. In that document, the inspector states that the product that was imported was “2 boxes of beef patties – hand carried from Jamaica approx. 10 kgs.”

[20] By way of indirect evidence, the Agency, in its Case Summary at pages 11 and 12 of the Report, refers to the product found in Taylor’s possession and then confiscated by Agency Inspector #11623 as “meats”, “meat products”, “food products”, “beef patties”, or “meat patties”.

### **Analysis and Applicable Law**

[21] 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.*

[22] Section 2 of the Act defines “agri-food Act”:

**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;*

[23] 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,*

[24] 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*.

[25] 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 follows, in 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.*

[26] 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.*

*(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an agri-food Act applies in respect of a violation to the extent that it is not inconsistent with this Act.*

[27] When an AMP provision has been enacted for a particular violation, as is the case for section 40 of the *Health of Animals Regulations*, Taylor has little room to mount a defence. In the present case, section 18 of the Act will exclude practically any excuse that he might raise, such as he misunderstood the Canada Customs Declaration Card E311 or that he simply forgot to declare or present any food product to the inspector, as is required. Given Parliament's clear statement on the issue, the Tribunal accepts that none of these statements by Taylor would be permitted defences under section 18.

[28] 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.*



[29] 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.*

[30] The strictness of the AMP system reasonably must apply to both Taylor 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. It is unfortunate in this case, that although Taylor requested an oral hearing, he failed to appear the day of the hearing to present his evidence and argue his case. Equally disappointing is the fact that the Agency did not produce any witnesses at the time of the hearing to clarify any of the evidence offered to the Tribunal by way of its written case.

[31] Noting the written record from Taylor and the Agency, as well as the oral argument of the Agency at the hearing, the Tribunal finds that the Agency has failed to prove all of the necessary elements to support the Notice of Violation and ground a finding by this Tribunal that Taylor committed the violation alleged in that notice. The Agency did not provide sufficient, clear and undisputed evidence, on the balance of probabilities, that the confiscated product, the “Jamaican Patties”, did actually contain meat. As there were no witnesses at the hearing to give evidence on this key issue, or to answer questions that might have shed light on this question, the Tribunal is left to determine the composition of the patties from the written evidence of the parties.

[32] From the applicant’s perspective, there is no evidence or admission from Taylor that the patties actually contained any meat. In fact, the evidence he provided to the Tribunal in his request for review and the evidence of his words to Inspector #11623 at the time of the alleged violation were that the patties did not contain meat. Moreover, the labels of the confiscated products, as shown in the photos, located at Tab 6 of the Report, do not make any mention of the word “meat” in describing the product.

[33] From the respondent’s perspective, there appears to be an assumption, rather than any direct evidence on the point, that the Agency and Inspector #11623 believed Taylor’s patties were “meat patties” or “beef patties”. Without any direct evidence, such as a reference to the list of ingredients on the confiscated product, or the breaking open of one of the patties and the visual confirmation that it contained meat or meat products, the Agency has failed to present any basis in evidence for a determination by its Agent that the Patties actually contained meat. Moreover, the varied use of terms by the Agency in its Case Summary at pages 11 and 12 of the Report referring to the product found in Taylor’s possession and then confiscated by Agency Inspector #11623 as “meats”, “meat products”, “food products”, “beef patties”, or “meat patties”, go no great distance in substantiating the actual contents of the patties.

[34] Given the conflicting evidence of Taylor and the Agency on the precise point of the content of the patties, the Tribunal finds that the Agency has not met the burden of providing evidence, which on the balance of probabilities, would convince the Tribunal that the food products found in Taylor's possession actually contained meat. Without something more than a declaration by the Agency and its Inspectors, and in light of a clear declaration by Taylor that the patties he was bringing into Canada did not contain meat, the Tribunal finds that the violation alleged in the Notice of Violation has not been made out. The Agency and its Inspectors were in an opportune position to collect and present direct evidence, for example by way of a recitation of the list of ingredients on the confiscated product or by direct visual examination of a broken-open pattie, that could have contradicted the evidence of Taylor. As a result, the Tribunal, as a finding of fact, is not convinced that on the balance of probabilities that the confiscated patties in question actually contained meat, rather than some other product.

[35] The *Act* states that the respondent must establish, on a balance of probabilities, that the person named in the Notice of Violation committed the violation identified in the notice. The Tribunal finds that, on the balance of probability, the Agency has failed to meet this standard in this case. The *Doyon* decision requires the Tribunal to "*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.*" On the evidence presented, too much "conjecture" must be entertained to uphold the violation before the Tribunal in this case.

[36] The Tribunal finds that the Agency has not proved, on the balance of probabilities, that the Jamaican patties actually contained meat, and as a result, the applicant did not commit the alleged violation and is not liable for payment of the monetary penalty.

Dated at Ottawa, this 16<sup>th</sup> day of December, 2010.

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Dr. Donald Buckingham, Chairperson

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March 22, 2011

**ERRATUM**

Please note that the citation for the English version of the decision Taylor v. Canada (CFIA), 2010 CART 032; Docket: RTA-60390; RT-1541 (dated October 1, 2010) is hereby amended.

The current citation, which reads:

Citation: Taylor v. Canada (CFIA), 2010 CART 032

Date: 20101216  
Docket: RTA-60390;  
RT-1541

is amended to read as follows:

Citation: Taylor v. Canada (CBSA), 2010 CART 032

Date: 20101216  
Docket: RTA-60390;  
RT-1541

The decision is hereby amended as set out above and the corrected page 1 of the decision is attached.

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Dr. Donald Buckingham, Chairperson