

***AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE
MONETARY PENALTIES ACT***

DECISION

In the matter of an application for a review of the Minister's decision that the Applicant committed a violation pursuant to provision 34(2)(a) of the *Health of Animals Regulations*, and requested by the Applicant pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Heinz Wittich, Applicant

- and -

Canada Border Services Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the Minister's decision dated April 15th, 2008, and all submissions and information relating to the violation, the Tribunal, by order, confirms the Minister's decision and orders the Applicant to pay the penalty in the amount of \$200.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

The Applicant did not request an oral hearing.

This is not a review of the facts of the violation but rather a review of the Minister's decision.

The Notice of Violation #YYZ 001732 dated June 30th, 2007 alleges that the Applicant, on or about 20:15 on the 30th day of June 30, 2007, at Toronto, in the province of Ontario, committed a violation, namely: "Import unfertilized bird eggs or egg products from country other than USA that is not designated free from Newcastle disease and avian influenza", contrary to provision 34(2)(a) of the *Health of Animal Regulations*, which states as follows:

34. (2) Subject to subsection (3), no person shall import unfertilized bird eggs or egg products into Canada from a country other than the United States or from a part of such a country, unless

(a) the country of origin or part of such a country is designated as free of avian pneumoencephalitis (Newcastle disease) and fowl plague pursuant to section 7;

In order to vary or set aside the Minister's decision, the Review Tribunal must find that the Minister committed a jurisdictional error or an error in law. For example, an application for a review may be allowed for the following reasons:

1. Powers are exercised in bad faith.
2. Powers are improperly delegated.
3. Powers are exercised without regard to natural justice or fairness.
4. Powers are exercised for improper purposes.
5. There is no evidence before the Minister to support the decision.
6. A decision is based upon irrelevant considerations.
7. An error is made in the interpretation of related or governing legislation, common law principles generally, or as the principles apply to the facts.
8. A decision is so unreasonable that any reasonable person in the Minister's position could not have made it.

The Minister based his decision on the evidence in the record, including an acknowledgement by the Applicant that the restricted eggs were imported by mistake.

As such, there are ample grounds upon which the Minister found the Applicant to have committed the violation.

In his written submission, the Applicant requests that the penalty be paid by installments. This is entirely within the discretion of the Respondent, and I would ask the Applicant to contact the Respondent in this regard after receiving this decision.

The Tribunal also wishes to point out to the Applicant that this is not a criminal or a federal offence but a monetary violation, and that he 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 11th day of July, 2008.

Thomas S. Barton, Q.C., Chairman