

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

**DECISION**

In the matter of an application for a review of a Minister's decision that the Applicant committed a violation pursuant to provision 40 of the *Health of Animals Regulations*, and requested by the Applicant pursuant to subsection 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

**Hector Jose Lopez Cruz, Applicant**

**-and-**

**Canada Border Services Agency, Respondent**

**MEMBER H. LAMED**

**Decision**

**Following an oral hearing and a review of the Minister's decision dated February 28<sup>th</sup>, 2007, and all oral and written submissions, the Tribunal by order, confirms the Minister's decision and orders the Applicant to pay the applicable 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 requested a review of the Minister's decision dated February 28, 2007. An oral hearing took place in Montreal, Quebec, on May 30, 2008.

The Applicant represented himself.

The Respondent was represented by Mrs. Rosemary Copeland-Jones.

The Notice of Violation #M-018719 dated June 8, 2004 alleges that the Applicant, on June 8, 2004 at Montreal (Dorval) in the province of Quebec, committed a violation, namely: "Importation d'un sous-produit d'origine animale, à savoir de la viande, sans avoir respecté des exigences prescrites", contrary to provision 40 of the *Health of Animals Regulations*, which states:

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.

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

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 evidence contained in the Canada Border Services Agency's report (the Agency), on which the Minister's Decision is based, was presented at the hearing. The Respondent established that the Applicant arrived at Dorval, Quebec, on Air France flight 346 on June 8, 2004. The Respondent produced a Customs Declaration card identified by Mr. Lopez Cruz as being the one he signed and presented at arrival in Canada (Tab 3 of the Agency's Report). The card indicates that Mr. Lopez Cruz responded "no" to the question as to whether he was bringing any "Food" (fruits, vegetables, meats, eggs, dairy products) into Canada. The evidence presented by the Respondent is that as Mr. Lopez Cruz was retrieving his luggage from the carousel area, a detection team consisting of an inspector and a detector dog discerned that the Mr. Lopez Cruz had food in his luggage. At the secondary inspection area, Inspector #51435 asked if the luggage in question belonged to Mr. Lopez Cruz and if he had packed it himself. Mr. Lopez Cruz replied in the affirmative. Inspection of the luggage revealed five sausages (about 2kg). Mr. Lopez Cruz did not have the certificates required by law to import these products.

The Applicant did not dispute the facts on which the Minister's decision was based. Further, no errors of law were alleged. Mr. Cruz explained that he had forgotten he had put the sausages in his luggage. He explained that he admitted his mistake immediately, and reiterated that he was sorry and did not intend to contravene the law.

Although the Tribunal has no reason to doubt the sincerity of Mr. Lopez Cruz's statements, and believes that he acted honestly when he realized his error, there is no basis in law upon which to change the Minister's decision.

The Tribunal therefore orders Mr. Lopez Cruz to pay the monetary penalty of \$200.00 to the Respondent within 30 days after the day of service of this decision.

Dated at Montreal, this 9<sup>th</sup> day of September, 2008.

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Member Helena Lamed