

***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 40 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*.

Robert G. Warman, Applicant

- and -

Canada Border Services Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the Minister's decision dated November 14th, 2007, 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 requested a review of the Minister's decision in the form of an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

The oral hearing was held in Hamilton, Ontario, on September 22nd, 2008.

The Applicant made his own submissions.

The Respondent was represented by Mr. Jan Wojcik, Senior Appeals Officer.

Evidence for the Respondent was given by Ms. Josée Laurin, Senior Program Advisor.

At the outset of the hearing, I reviewed the following documentation received by the Tribunal:

- Notice of Violation dated November 19th, 2006;
- Letter dated May 21st, 2007, from the Applicant to the Respondent in connection with meeting held in Ottawa on April 25th, 2007;
- Minister's decision dated November 14th, 2007;
- Letter dated December 3rd, 2007, from the Applicant requesting a review of the Minister's decision;
- Letter dated January 22nd, 2008, from the Respondent enclosing its Report;
- Letter dated March 3rd, 2008, from the Applicant's solicitors in response to the Respondent's Report;
- Letter dated March 18th, 2008, from the Respondent with its rebuttal to the Applicant's response;
- Letter dated March 27th, 2008, from the Respondent with a correction to its rebuttal;
- Letters dated April 2nd, 2008 and May 13th, 2008, from the Respondent regarding the country of origin of the animal product.

After confirming both parties had copies of these documents, I entered them on the record as evidence for the purpose of the hearing.

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 Notice of Violation #YY001339 dated November 19th, 2006 alleges that the Applicant, on or about 2:00 a.m., on the 19th day of November, 2006, at Toronto, in the province of Ontario, committed a violation, namely: "Import an animal product, to wit: meat, without meeting the prescribed requirements ", contrary to provision 40 of the *Health of Animal Regulations*, which 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.

In general, *Part IV* of the *Health of Animals Regulations* permits importation into Canada from the United States of most animal by-products, if the country of origin is the United States.

Importation into Canada from other countries is only permitted (except for certain specified products such as gluestock and bone meal, for which there are other specific requirements) if the importer meets one of the following four prescribed requirements of *Part IV* of the *Health of Animals Regulations*, namely:

1. Under subsection 41(2) if the country of origin has a disease-free designation and the importer produces a certificate signed by an official of the government of the country of origin that shows that the country of origin is the designated country referred to in the disease-free designation.

2. The importer meets the requirements of subsection 52(1) which provides as follows:

52.(1) Notwithstanding anything in this Part, a person may import an animal by-product if the person produces a document that shows the details of the treatment of the animal by-product and the inspector is satisfied, based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, where necessary, on an inspection of the animal by-product, that the importation of the animal by-product into Canada would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.

3. The importer has acquired an import permit pursuant to subsection 52(2) which states:

52.(2) Notwithstanding anything in this part, a person may import an animal by-product under and in accordance with a permit issued by the Minister under section 160.

4. The importer has presented the animal by-product for inspection and a satisfactory inspection has been carried out under paragraph 41.1(1)(a) which states as follows:

41.1(1) Notwithstanding section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than a thing described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if

(a) an inspector is satisfied on reasonable grounds that the animal by-product is processed in a manner which would prevent the introduction into Canada of any reportable disease or any other serious epizootic disease to which the species that produced the animal by-product is susceptible and which can be transmitted by the animal by-product, provided that the animal by-product or the thing containing the animal by-product is not intended for use as animal food or as an ingredient in animal food.

The Minister's decision was based on the fact that the Applicant imported an animal product (bagel containing meat) from the Dominican Republic and was not in possession of permits or certificates for the importation of this product.

The Applicant's evidence did not dispute those facts.

Accordingly, I find the Minister had sufficient evidence on which to reasonably conclude that the Applicant committed the violation.

Although I am satisfied the Applicant did not knowingly try to evade any of the Regulations in place at the time, this is not a defence to the violation.

There were a number of other issues raised I indicated I would address.

Failure to declare

Although there are differences in the evidence as to the manner and time of declaration of the sandwich during the custom's process, as indicated at the hearing the violation in question is not for failure to declare the sandwich upon importation but for failure to meet the specific prescribed requirements in *Part IV* of the *Health of Animal Regulations*.

Had the sandwich been initially declared on Form E311, Ms. Laurin testified she thought the goods may have been confiscated, but that there likely would have been no Notice of Violation given.

Failure to declare is itself a separate violation under the *Health of Animals Act*.

Country of origin

The undisputed evidence of the Applicant is that the bagel sandwich was purchased at a shop near his home in Burlington, Ontario. It can be assumed from the definitions of "country of origin" in the *Health of Animal Regulations*, that Canada is the country of origin of the turkey in the sandwich and that the product was processed in a manner which would prevent the introduction of disease.

According to subsection 41(1) of the *Health of Animal Regulations*, the Applicant could have imported the sandwich from the United States if the country of origin had been the United States.

However, section 41 of the *Health of Animal Regulations* does not specifically address the importation of goods when the country of origin is Canada. This appears to be an anomaly and an unfortunate situation for the Applicant.

Applicant's future travel repercussions

Although the Respondent indicated the fact of the violation would not likely lead to complications for future travel by the Applicant, Ms. Laurin kindly agreed to investigate this further and to notify the Applicant (copy to the Tribunal) as to any future travel hindrance that may arise as a result of this violation.

Amount of penalty

The Tribunal confirms that the penalty of \$200 is established by the *Regulations*, as is the description of the violation as "serious". The Tribunal has no authority to change these.

Removal of violation

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 9th day of October, 2008.

Thomas S. Barton, Q.C., Chairman