



Citation: Kenane v. Canada (Minister of Agriculture and Agri-Food), 2010 CART 8

Date: 20100331
Docket: RTA-60371;
RT-1510

Between:

Mansouria Kenane, Applicant

- and -

Minister of Agriculture and Agri-Food, Respondent

[Translation of the official French version]

Before: Chairperson Donald Buckingham

In the matter of an application for a review of the facts of a violation of section 40 of the *Health of Animals Regulations*, alleged by the respondent, and requested by the applicant pursuant to subsection 13(2) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

DECISION

[1] Following a hearing and after reviewing the decision made by the Minister on 1 June 2009, and all the submissions by the parties relevant to the violation, the Canada Agricultural Review Tribunal (“the Tribunal”), by order, confirms the Minister’s decision and orders the applicant to pay the respondent the monetary penalty of \$200 within 30 days of notification of this decision.

The hearing was held in Montreal, QC,
on January 27, 2010.

REASONS

The Alleged Incident and Issue Raised in the Case

[2] The respondent alleges that Ms. Kenane, on 4 September 2008, at the Pierre-Elliott-Trudeau International Airport in Dorval, Quebec, imported without so declaring four sausages each weighing 1 kg, as well as a bag containing a piece of unidentified meat weighing 1.6 kg, in violation of section 40 of the *Health of Animals Regulations*.

[3] The respondent issued a Notice of Violation to Ms. Kenane as a result of these actions. Before the Minister, she challenged the facts reported in the Notice of Violation. The Minister's decision maintained the enforcement action. Ms. Kenane then requested that the Tribunal hear her regarding the Minister's decision.

[4] The issue raised in this case is as follows:

- Did Ms. Kenane present sufficient elements as part of a review of the Minister's decision for the Tribunal to modify or cancel this decision, either as a result of an error in the exercise of the Minister's jurisdiction or as a result of an error in law?

The Record and Pertinent Aspects of the Procedural History of the Case

[5] Notice of Violation #3961-08-M-0311, dated 4 September 2008, issued by the respondent, the Canada Border Services Agency ("the Agency"), alleges that Ms. Kenane, around 6:40 p.m. on 4 September 2008, in Dorval, in the province of Quebec, "committed a violation, namely the importation of an animal by-product to wit: meat, without meeting the prescribed requirements, contrary to section 40 of the *Health of Animals Regulations*", which constitutes a violation of section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

[6] This violation under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* is a serious violation for which the penalty amount has been set at \$200.

[7] Section 40 of the *Health of Animals Regulations* reads 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.*

[8] On 12 September 2008, Ms. Kenane requested that the Minister review the facts of the violation.

[9] On 1 June 2009, the Minister rendered his decision and the enforcement actions were upheld under subsection 13(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

[10] On 9 June 2009, Ms. Kenane asked the Tribunal to review the Minister's decision under subsection 13(2) de la *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

[11] Ms. Kenane also requested a hearing, in accordance with subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The hearing took place in Montréal, in the province of Quebec on 27 January 2010. Ms. Kenane was represented by her daughter, Dalila Belhouala, while the Agency was represented by Mr. Jean-Marc Dupuis of the Agency.

Analysis and Applicable Law

[12] In reviewing the Minister's decision, the Tribunal cannot change or cancel a decision unless there was an error in exercise of the Minister's jurisdiction or there was an error in law. Here are examples of reasons that could lead the Tribunal to change or cancel the Minister's decision:

1. The powers were exercised in bad faith.
2. The powers were delegated in an inappropriate manner.
3. The powers were exercised without regard for the principles of natural justice or fairness.
4. The powers were exercised for inappropriate purposes.
5. No element of the evidence supports the Minister's decision.
6. The decision was based on irrelevant considerations.
7. An error was committed in the interpretation of the connected or enabling legislation, the principles of common law in general or in the application of legal principles to the facts.
8. A decision is so unreasonable that no reasonable person in the Minister's place would have made such a decision.

[13] The Tribunal must therefore evaluate if the decision was unreasonable under the circumstances and not if it was correct, even if the decision is not one that the Tribunal would necessarily have rendered.

[14] The evidence examined by the Minister reveals that Ms. Kenane arrived in Montréal from France on Air France flight 346, on 4 September 2008. She answered "no" to all the questions on the E311 Customs Declaration Card, including the ones regarding "meat or meat products; milk products; fruits; vegetables; seeds, nuts; plants and animals; animal parts; cut flowers; soil; wood or wood products; birds, insects." The primary inspection determined that Ms. Kenane would go to a secondary inspection to verify her declaration. This second inspection revealed the presence of meat in her luggage, resulting in the Notice of Violation.

[15] The Agency, on page 20 of its case file, argued that the Minister's decision was reasonable because: Ms. Kenane did not truthfully answer the questions asked by the agents as part of their duties; Ms. Kenane did not declare any animal by-products on her E311 Customs Declaration Card, neither orally to the primary inspector, nor to the secondary inspector; Ms. Kenane did not present for inspection the products she had in her baggage; and Ms. Kenane had in her possession no certificate or permit for importing these products into Canada.

[16] The Tribunal is satisfied that the evidence on file is sufficient to support the Minister's decision. This decision is reasonable under the circumstances.

[17] During the hearing, the only argument submitted by Ms. Kenane's representative, her daughter Dalila Belhouala, was that Ms. Kenane barely understood any French and did not understand the questions or answers of the inspectors.

[18] The evidence given during the hearing by inspector 17774, the inspector who conducted the secondary inspection, was that Ms. Kenane presented herself with her luggage and answered "no" to the questions she was asked, i.e. whether or not she had food in her luggage, even when as inspector 17774 testified, she could smell food in Ms. Kenane's luggage. Inspector 17774 firmly believed that Ms. Kenane had no difficulty understanding French. If she had had problems understanding French, the primary inspector would have noted it on the E311 Customs Declaration Card. Inspector 17774 saw no notation to that effect on Ms. Kenane's E311 Customs Declaration Card.

[19] On the issue of Ms. Kenane's ability to understand French, the Tribunal accepts the inspector's evidence. If Ms. Kenane had a problem understanding French, she should have said so and asked for assistance before presenting herself before the primary inspector or have mentioned it to the secondary inspector.

[20] In his decision, the Minister concluded that the failure to declare the meat and their unauthorized importation is a violation under the *Health of Animals Regulations*. The Tribunal finds it is reasonable to conclude that 5.6 kilograms of meat found in Ms. Kenane's suitcases correspond to a category clearly listed on the E311 Customs Declaration Card. It is therefore mandatory to declare the meat at the point of entry. That did not happen and the inspection revealed Ms. Kenane had meat in her luggage and no authorization to import it. Faced with this evidence, the Tribunal concludes that the Minister's decision is reasonable that the elements of the violation were established.

[21] Therefore, the Tribunal orders Ms. Kenane to pay the \$200 penalty to the Agency within 30 days of receiving notification of this decision.

[22] Otherwise, the Tribunal informs Ms. Kenane that this violation is not a criminal act. After five years, she will have the right to ask the Minister to have this violation stricken from her file, in accordance with section 23 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*:

23. 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 on this 31st day of March 2010.

Donald Buckingham, Chairperson