

Canada Agricultural  
Review Tribunal



Commission de révision  
agricole du Canada

Citation: Ousmane Oumarou Timbo v. Canada (CBSA), 2012 CART 13

Date: 20120621  
Docket: CART/CRAC-1587

**Between:**

**Ousmane Oumarou Timbo, Applicant**

**- and -**

**Canada Border Services Agency, Respondent**

[Translation of the official French version]

**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 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 the verbal and written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant committed the violation and is liable for payment of the penalty in the amount of \$800 to the respondent within thirty (30) days of the date on which this decision is served.**

Hearing held in Montreal, Quebec,  
April 24, 2012.

## REASONS

### Alleged incident and issues

[2] The respondent, the Canada Border Services Agency (Agency), alleges that, on August 8, 2011, at Montreal, Quebec, the applicant, Ousmane Oumarou Timbo (Timbo), imported several kilograms of meat into Canada contrary to section 40 of the *Health of Animals Regulations*, without complying with the applicable provisions of “Part IV – Importation of Animal By-Products, Animal Pathogens and Other Things” of the *Health of Animals Regulations*.

[3] Pertinent sections of the *Health of Animals Regulations* state 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.*

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

*(a) the country of origin is the United States and the by-product, manure or thing is not derived from an animal of the subfamily Bovinae or Caprinae;*

*(b) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate of origin signed by an official of the government of that country attesting to that origin; or*

*(c) the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in a manner that would prevent the introduction into Canada of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate signed by an official of the government of the country of origin that*

*(i) attests that the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in that manner, and*

*(ii) shows the details of how it was collected, treated, prepared, processed, stored and handled.*

*(2) Subsection (1) does not apply in respect of manure found in or on a vehicle that is entering Canada from the United States if the manure was produced by animals, other than swine, that are being transported by the vehicle.*

**41.1** *(1) Despite section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than one described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if an inspector has reasonable grounds to believe that the importation of the by-product or thing, by its nature, end use or the manner in which it has been processed, would not, or would not be likely to, result in the introduction into Canada of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product was derived is susceptible and that can be transmitted by the by-product, and the by-product or thing is not intended for use as animal food or as an ingredient in animal food.*

*(2) No person shall, in respect of any animal by-product or thing containing an animal by-product that has been imported in accordance with subsection (1), use or cause it to be used as animal food or as an ingredient in animal food.*

...

**43.** *A person may import into Canada cooked, boneless beef from a country or a part of a country not referenced to in section 41 if*

*(a) it was processed in a place and in a manner approved by the Minister;*

*(b) it is accompanied by a meat inspection certificate of an official veterinarian of the exporting country in a form approved by the Minister; and*

*(c) on examination, an inspector is satisfied that it is thoroughly cooked.*

...

**46.** *No person shall import into Canada meat and bone meal, bone meal, blood meal, tankage (meat meal), feather meal, fish meal or any other product of a rendering plant unless, in addition to the requirements of sections 166 to 171,*

*(a) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is susceptible and that can be transmitted by the product, and the person produces a certificate of origin signed by an official of the government of that country attesting to that origin; and*

*(b) an inspector has reasonable grounds to believe that the product has been processed in a manner that would prevent the introduction of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is susceptible and that can be transmitted by the product.*

...

**52.** *(1) Despite anything in this Part, a person may import into Canada an animal by-product if the person produces a document that shows the details of the treatment of the by-product and an inspector has reasonable grounds to believe – based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, if necessary, on an inspection of the by-product – that the importation of the by-product 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.*

*(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 Tribunal must determine whether the Agency has established all the elements required to support the impugned Notice of Violation, and, if Timbo did import meat into Canada, whether he failed to meet the requirements that would have permitted such importation.

### **Procedural history**

[5] Notice of Violation n° 3961-11-M-0253 dated August 8, 2011, alleges that on that date in Dorval, Quebec, Timbo [TRANSLATION] “committed a violation, namely: imported an animal by-product, to wit: meat, without meeting the prescribed requirements contrary to section 40 of the *Health of Animals Regulations*”, which is a violation under 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] The Agency served the Notice of Violation personally on Timbo on August 8, 2011. The Notice of Violation indicates to Timbo that the alleged violation under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* is a serious violation for which the penalty assessed is in the amount of \$800. That same day, Timbo signed the Notice of Violation to indicate that he did not want to contest the penalty, and that he agreed to pay the aforementioned amount, but the Tribunal has noted that Timbo has never paid the penalty imposed.

[7] In his letter dated August 9, 2011 (which the Tribunal received on August 11, 2011), Timbo requested a review of the facts of the violation by the Tribunal in accordance with paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. Tribunal staff confirmed with Timbo that he had in fact requested an oral review in French pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

[8] On September 9, 2011, the Agency sent copies of its report (Report) concerning the Notice of Violation in question to Timbo and to the Tribunal, the latter receiving it that same day. The Report was received after the deadline set by the Tribunal. The Tribunal noted, however, that as both parties had agreed to the Agency's request an extension for submitting the Report, it granted that request.

[9] By letter dated October 26, 2011, the Tribunal invited Timbo and the Agency to file any additional submissions in the matter, no later than November 25, 2011. Timbo did not file any additional submissions further to this invitation. For its part, the Agency filed a colour copy of the black and white photograph (Tab 6 of the Report), and a clear copy of the Notice of Violation in question.

[10] The hearing Timbo requested was held in Montreal, Quebec, on April 24, 2012. Timbo represented himself, and Ms. Mélanie Charbonneau represented the Agency.

### **Evidence**

[11] The evidence submitted to the Tribunal consists of:

- i) written submissions filed by the Agency (the Notice of Violation, the Agency's Report and supplementary items, including the colour copy of the black and white photograph, and the clear copy of the Notice of Violation);
- ii) written submissions filed by Mr. Timbo (the submissions in his request for review);
- iii) oral evidence from the Agency's witness, Inspector 17843; and
- iv) Mr. Timbo's oral evidence at the hearing.

The Agency also submitted a supporting document at the hearing: a colour photograph of the black and white photograph (Tab 6 of the Agency's Report)

[12] The parties agreed on the following fact: Timbo arrived in Canada on flight AF 344 from France which landed at Montréal-Trudeau Airport in Dorval, Quebec, on August 8, 2011.

[13] The Agency presented the following evidence:

- a. Mr. Timbo filled out and signed a Canada Border Services Agency (CBSA) E311(09) Declaration Card, which is dated August 8, 2011. Mr. Timbo checked "no" in the box in response to the 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," and, in the Value of goods – CAN\$ purchased or received abroad (including gifts, alcohol and tobacco) box below, he wrote "ø" (E311 Customs Declaration Card signed by Mr. Timbo in Tab 2 of the Agency's Report).

- b. Based on the documents completed by Inspector 17843, during the secondary inspection, the latter found in one of Mr. Timbo's bags, [TRANSLATION] "1.8 kg of dried antelope and lamb meat" (CBSA's BSF 156, a seized item slip at Tab 5 in the Agency's Report; or [TRANSLATION] "dried antelope and lamb meat ... found here and there in the suitcase, wrapped in parchment paper and plastic bags," Inspector's non-compliance report on travellers at points of entry in Tab 7 of the Agency's Report).
- c. In her non-compliance report, Inspector 17843 wrote that since the products had not been declared, they were seized, forfeited and destroyed (non-compliance report in Tab 7 of the Agency's Report).
- d. In her AMPS Notice of Penalty Assessment, Inspector 17843 noted that she had asked Mr. Timbo whether the suitcase containing the meat was his suitcase, and [TRANSLATION] "he/she had said 'yes', and whether he/she had a permit or certificate, and he/she had said 'no'. The product was seized and destroyed." (Tab 10 in the Agency's Report).
- e. Inspector 17843 took a picture of the item in question (copy of the black and white photograph in Tab 6 of the Report, and in colour in the supporting documents). A sizeable amount of some type of meat can be clearly seen in the copy of the photo.
- f. The Agency submits, as evidence, a copy of a document from the Canadian Food Inspection Agency (CFIA) Automated Import Reference System (AIRS), which lists the importation requirements for sheep and venison from Niger with the following note: [TRANSLATION] "Recommendations to CBSA/Documentation and Registration Requirements: Entry refused" (Tab 9 of the Report).

[14] The only Agency witness who testified at the hearing was Inspector 17843, who has worked at the Agency since 2004. She told the Tribunal that she was working on August 8, 2011, when Timbo presented himself to Secondary Inspection. Inspector 17843 also testified that she checked his passport and asked him the four questions about his luggage: (1) Does this luggage belong to you?; (2) Did you pack it yourself?; (3) Do you know what is in it?; and (4) Does it contain anything that could injure me? She told the Tribunal that although Timbo had already passed the final point, that is the last step – Secondary Inspection - she nevertheless gave him a second chance to declare the food in his possession by asking him whether he had any food. Timbo replied that he did not have any. Inspector 17843 testified that she searched Timbo's luggage and found dried meat, which she photographed. The primary tool inspectors use to determine whether meat must be refused entry into Canada is the CFIA's AIRS. She also consulted another officer who was on the premises, an expert in agricultural products. The latter shared her opinion. Consequently, the aforementioned product was refused entry into Canada. Inspector 17843 said she explained to Timbo why she was giving him a Notice of Violation. Inspector 17843 told the Tribunal that Timbo said that the reason he had not declared the meat was because it was a gift.

[15] In response to a question during cross-examination, Inspector 17843 said she was certain she had asked the applicant whether he had any food in his possession.

[16] Timbo's evidence is in the submissions in his request for a review filed with the Tribunal in August 2011. The evidence he submitted is as follows: [TRANSLATION] "I did in fact have dried meat and some beans, which are highly prized products in Niger, and I was planning on giving them to my Nigerois and Canadian friends to taste. I did not know that I was not allowed to bring them back to Canada. Despite the fact that I was honestly unaware of the so-called rules, the items were seized and I had to pay a fine. I am a student living in Canada and my only source of income is the Government of Quebec's student loan and bursary program. As a result, I cannot pay the fine without compromising my education, which is important to me. I barely scrape by on the bursary itself which allows me to focus on my education."

[17] At the hearing, Timbo told the Tribunal that he was a student in Canada, and that he had arrived in Dorval on August 8, 2011. After a 12-hour flight, he was tired and had not paid much attention when he filled out his E311 declaration card. He told the Tribunal that he did not declare the meat and its value on the E311 card or in Primary Inspection because he considered the meat a gift without any official value. Timbo testified that Inspector 17843 did not ask him whether he had any meat but rather that he had voluntarily declared that he had meat, and showed her where it was in his baggage. Timbo also said that he knew he was bringing meat back, but he did not know that he was prohibited from importing it into Canada. Timbo concluded his testimony by saying that after the meat was found, the Inspector became quite abusive; he said she snatched and searched his wallet, and was rude and disrespectful.

[18] After he was cross-examined, Timbo admitted to the Tribunal that he had not declared the meat on his E311 card, but when Inspector 17843 opened his luggage, he had admitted to her that he had some meat. He had removed it from his luggage to show her. Timbo told the Tribunal that he had two bags - one had clothes in it and the other food - and that both bags were locked. The Inspector had cut the lock on the bag containing clothes, and Timbo had opened the other with his key.

### **Analysis and applicable law**

[19] 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.*

[20] Section 2 of the Act defines "agri-food Act":

**2.** *In this Act,*

"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;*

[21] 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...*

[22] 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*.

[23] The Act's system of administrative monetary penalties (AMP), as set out by Parliament, is 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 follow, at 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.*

[24] Moreover, the Federal Court of Appeal, in *Doyon*, 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 violator was responsible: see section 19 of the Act.*

[25] 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.*

[26] 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. In the case of a violation of section 40 of the *Health of Animals Regulations*, the Agency must prove that:

- (1) Timbo is the person who committed the violation;
- (2) Timbo entered Canada with an animal by-product, namely antelope and lamb meat, in his possession; and
- (3) if Timbo did in fact import meat products into Canada, that customs officials provided Timbo with a reasonable opportunity to demonstrate that the importation complied with Part IV of the *Health of Animals Regulations*.

[27] The Tribunal must consider all the written and oral evidence before it to determine whether the Agency has proven, on the balance of probabilities, all the elements of the alleged violation.

[28] With respect to elements 1 and 2, Timbo's identity as the alleged violator is not in dispute. Throughout the inspection process, it was never disputed that the bag containing the food that is the subject of this case belonged to Timbo. Therefore, the Tribunal finds as fact that Timbo had dried meat in his possession, in his baggage, when he entered Canada on August 8, 2011.

[29] With respect to element 3, the Tribunal finds that Timbo was given reasonable opportunity to declare the meat through his E311 Declaration Card. He chose to mark on that card that he did not have any meat products in his possession. He might also have informed the Agency's primary inspector that there were meat products in his baggage. Either of these declarations might have permitted an Agency inspector the opportunity to inspect the meat products he had in his baggage, and perhaps have allowed the inspector to permit such importation under subsection 41.1 of the *Health of Animals Regulations*. Since Timbo did not declare any meat product before he found himself facing a Secondary Inspection officer, and in the absence of any official documentation that would have permitted the importation, the Agency inspector, on the basis of the AIRS report issued by the CFIA for meat imported from Niger, was justified in barring entry to these meat products.

[30] Therefore, unless Timbo is able to convince the Tribunal of the existence of a defence to the alleged violation, the Tribunal must conclude that the essential elements have been proven by the Agency on the balance of probabilities.

[31] 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 exercised due diligence to prevent the violation; or reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.*

[32] When an AMP provision has been enacted for a particular violation, as is the case for section 40 of the *Health of Animals Regulations*, Timbo has little room to mount a defence. In the present case, section 18 of the Act will exclude practically any excuse that Timbo might raise, such as he was not familiar with Canadian laws, that the meat was a gift and that he did not have the means to pay the fine.

[33] Given Parliament's clear statement on the issue, the Tribunal accepts that none of the statements made by Timbo in his application for a review and in his testimony at the hearing are permitted defences under section 18.

[34] Timbo could, however, have defended himself against an alleged violation under section 40 of the *Health of Animals Regulations*, if he had been able to prove that he had, and had provided Agency inspectors with, valid importation documentation. Pursuant to section 40 of the *Health of Animals Regulations*, persons are permitted to import meat if they comply with certain requirements found in "Part IV – Importation of Animal By-Products, Animal Pathogens and Other Things" of the Regulations. If, for example, the alleged violator presents a permit, document, or certificate, as set out in sections 41, 43, 46 or 52 of the Regulations, then that valid documentation would act as a defence against an alleged violation of section 40. In the case at hand, the evidence reveals, and the Tribunal finds as fact, however, that Timbo did not provide an Agency inspector with any documentation that would have satisfied these requirements and, thus, permitted him to import meat from Niger.

[35] Agency inspectors are charged with the important task of protecting Canadians, the food chain and agricultural production in Canada from risks posed by biological threats to plants, animals and humans. There is no doubt that these tasks must be carried out conscientiously. The Tribunal knows that the Agency has established its own process for handling travellers' complaints against Agency inspectors when the conduct of its inspectors towards travellers becomes excessive. The Tribunal is not responsible for deciding this in the case at hand. Furthermore, the Tribunal's jurisdiction to review notices of violation comes from its empowering legislation. According to these laws, the Tribunal does not have the mandate or the jurisdiction to cancel or reject a Notice of Violation based solely on the conduct of Agency inspectors with applicants or on humanitarian or financial grounds.

[36] According to these laws, the Tribunal must examine the evidence to determine if the Agency has proved, on the balance of probabilities each element of the alleged violation. In this case, the Tribunal concludes that the Agency has done so. The Tribunal therefore finds that Timbo committed the violation and is liable for payment of the penalty in the amount of \$800.00 to the respondent within thirty (30) days of the date on which this decision is served.

[37] The Tribunal wishes to inform Timbo that this is a monetary violation, not a criminal or a federal offence, and that he has the right to apply after five 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 21<sup>st</sup> day of June, 2012.

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Dr. Donald Buckingham, Chairperson