



Citation: Zaeem Aziz Qureshi v. Canada (CBSA), 2012 CART 18

Date: 20120926  
Docket: CART/CRAC-1620

**Between:**

**Zaeem Aziz Qureshi, Applicant**

**- and -**

**Canada Border Services Agency, Respondent**

**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 the facts of a violation of paragraph 34(1)(b) of the *Health of Animals Regulations*, alleged by the respondent.

## **DECISION**

**[1] Following an oral hearing and a review of all oral 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 \$800.00 to the respondent within thirty (30) days after the day on which this decision is served.**

The hearing was held in Ottawa, ON,  
on August 29, 2012.

## REASONS

### Alleged Incident and Issues

[2] The respondent, the Canada Border Services Agency (Agency), alleges that, on March 12, 2012, at Dorval, Quebec, the applicant, Mr. Zaeem Aziz Qureshi (Qureshi), imported milk products into Canada contrary to section 34(1)(b) of the *Health of Animals Regulations*.

[3] Subsection 34(1) of the *Health of Animals Regulations* states as follows:

**34. (1)** *No person shall import milk or milk products into Canada from a country other than the United States or from a part of such a country, unless*

*(a) the country or part of the country is designated as free of foot and mouth disease pursuant to section 7; and*

*(b) the person produces a certificate of origin signed by an official of the government of the country of origin that shows that the country of origin or part of such a country is the designated country or part thereof referred to in paragraph (a).*

[4] The Tribunal must determine whether the Agency has established all the elements required to support the impugned Notice of Violation and, if Qureshi did import milk products into Canada, whether he met the requirements that would have permitted such importation.

### Procedural History

[5] Notice of Violation 3961-12-M-0081 dated March 12, 2012, alleges that on that date at the International Airport in Dorval, Quebec, Qureshi “committed a violation, namely: Import of a milk product without declaring the items, Contrary to section 34(1)(b) 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 Qureshi on March 12, 2012. The Notice of Violation indicates to Qureshi that the alleged violation is a serious violation under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, for which the penalty assessed is in the amount of \$800.00.

[7] On March 27, 2011, Qureshi delivered by hand to the Tribunal his request for a review of the facts of the violation, in accordance with paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. At this time, Qureshi indicated to Tribunal personnel that he wished to proceed with a review by way of an oral hearing in English, in accordance with subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

[8] On April 3, 2012, the Agency sent its report (Agency Report) concerning the Notice of Violation to Qureshi and to the Tribunal, the latter receiving it on April 10, 2012.

[9] In a letter dated April 11, 2012, the Tribunal invited the parties to file with it any additional submissions (Additional Submissions) in this matter, no later than May 11, 2012. No additional submissions from the parties were received prior to the Notice of Hearing that was sent to the parties on June 4, 2012, indicating that the hearing of this matter would take place in Ottawa, on August 29, 2012.

[10] At the oral hearing held in Ottawa on August 29, 2012, Qureshi was not present but by an email dated August 16, 2012, authorized his wife Ms. Asima Zaeem Qureshi (Ms. Qureshi) to act as his representative. The Agency was represented by one of its Senior Program Advisors, Mr. Jan Wojcik.

### **Evidence**

[11] The evidence before the Tribunal in this case consists of written submissions from the Agency (Notice of Violation and Agency Report) and from Qureshi (submissions contained in his request for review), as well as the oral testimony given by the witnesses at the oral hearing. The Agency presented one witness, Agency Inspector 17827 while Qureshi presented one witness—Ms. Qureshi—at the hearing on August 29, 2012. The Agency also tendered one exhibit at the hearing: a copy of Inspector 17827's notes made on March 12, 2012, in respect of events that led to the issuance of the Notice of Violation under examination.

[12] The parties agree on almost all of the facts of this case. Agreed facts are as follows:

- a. Qureshi came to Canada from Saudi Arabia on board flight RJ 267, landing at the P.-E.-Trudeau International Airport on March 12, 2012 (Qureshi's Request for Review and Tab 3 of Report).
- b. Qureshi completed and signed a Canada Border Services Agency Declaration Card E311(09) (Declaration Card) dated March 12, 2011. Qureshi marked "No" beside the following 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." (Tab 3 of Report).
- c. Qureshi reported to the Canada Border Services Agency in Montreal (Dorval) upon deplaning. He completed the primary inspection, but was required to undergo a secondary inspection. Inspector 17827, prior to performing the secondary inspection, asked Qureshi if the luggage before him was his, whether he prepared the bags and whether he knew the contents of them, to which he responded "yes" The Inspector then searched Qureshi's luggage and found five cans of condensed or evaporated milk, specifically "Rainbow Brand Cardamom Quality Milk" which

was wrapped in a plastic bag among clothes in Qureshi's luggage. Qureshi told Inspector 17827 that the milk was for his wife. Inspector 17827 asked Qureshi whether he had any permits or certificates to which he replied "no" (Qureshi's Request for Review, Tab 2 of Report, Exhibit 1, and oral evidence of Inspector 17827).

- d. The milk products found in Qureshi's luggage were photographed (Tab 4 of the Report). Inspector 17827 noted that he found five cans of condensed milk in a plastic bag in Qureshi's suitcase among his clothes. (Tab 2 of the Report and oral evidence of Inspector 17827).
- e. The importation of milk products into Canada is prohibited unless proper documentation is secured for importation. The Automated Import Reference System (AIRS) of the Canadian Food Inspection Agency (CFIA) confirmed to Agency Inspectors that milk products from Saudi Arabia are to be refused entry into Canada. The AIRS report recommends that the Agency therefore "Refuse Entry" of such products (Tab 9 of Report; and oral testimony of the Inspector 17827).
- f. Qureshi did not give any documents, permits or certificates to the Agency's representatives on March 12, 2011, or at any time after that date (Tabs 2 and 9 of the Report, Exhibit 1 and oral evidence of Inspector 17827).
- g. Inspector 17827 stated in his Non Compliance Report that Qureshi's products were not declared and that they were seized and destroyed (Tab 2 of the Report). Inspector 17827 issued Qureshi a Notice of Violation and explained the options he had if he wished to pay or contest it (oral evidence of Inspector 17827).
- h. Qureshi maintained that he brought the Cardamom milk for his wife because she suffers from a medical condition that does not allow her to drink ordinary milk but which permits her to drink this kind of milk. This was the reason for his importation of the milk (Qureshi's Request for Review, Exhibit 1 and oral evidence of Inspector 17827).

[13] The only points on which the evidence of the Agency and Qureshi differed was that Qureshi maintains that the imported milk was from Holland and not Saudi Arabia (Qureshi's Request for Review, oral evidence of Ms. Qureshi, and Tab 1 of the Report) and that the basis for relief in this case should be on "Humanitarian and Medical" grounds (Qureshi's Request for Review).

[14] At the hearing, Ms. Qureshi confirmed that she agreed with all the evidence of Inspector 17827, that she uses the milk products in question for her medical condition, and that the product very much helps her medical condition. She also told the Tribunal that the milk was made in Holland, not Saudi Arabia, that her husband should have obtained a letter from her doctor regarding the reason for importing the milk and that he should have declared it upon entering Canada (oral evidence of Ms. Qureshi).

## **Analysis and Applicable Law**

[15] 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.*

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

*2. "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[.]*

[17] 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, ...*

[18] The Minister of Agriculture and Agri-Food has made one such set of regulations, the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, SOR/2000-187, which designate as violations certain offences against 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 to the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, which includes a reference to paragraph 34(1)(b) of the *Health of Animals Regulations*.

[19] The Act's scheme of administrative monetary penalties (AMP), as set out by Parliament is, however, very strict in its application. In *Doyon v. Attorney General of Canada*, 2009 FCA 152, the Federal Court of Appeal described the AMP system as follows, 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.*

[20] The Act creates a liability scheme that is not very permissive since it allows neither a due diligence nor a mistake of fact defence. Section 18 of the Act states as follows:

**18. (1)** *A person named in a notice of violation does not have a defence by reason that the person*

*(a) exercised due diligence to prevent the violation; or*

*(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.*

[21] Since an AMP provision has been enacted for a particular violation, in this instance paragraph 34(1)(b) of the *Health of Animals Regulations*, Qureshi has very few defences available to him. In the present matter, section 18 of the Act excludes practically any excuse that Qureshi might raise, such as his limited knowledge of the law on food and products that are prohibited while travelling, or simply his forgetting to declare or show any food product to the inspector as he should have done and thus perhaps avoided his receiving a notice of violation.

[22] Given Parliament's clear intent in this regard, the Tribunal accepts that none of the statements made by Qureshi in his request for review could be relied on in his defence under section 18.

[23] However, in *Doyon*, the Federal Court of Appeal also pointed out that the Act places a heavy 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 person named in the notice of violation committed the violation identified in the notice: see section 19 of the Act.*

[24] 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.*

[25] The strictness of the AMP scheme must reasonably apply to both Qureshi and the Agency. Therefore, it is the Agency's duty to prove, on a balance of probabilities, all the elements of the violation that form the basis of the Notice of Violation. While Notice of Violation 3961-12-M-0081 dated March 12, 2012 refers to Qureshi's failure to declare a milk product, a violation of paragraph 34(1)(b) of the *Health of Animals Regulations* requires the Agency to prove, not Qureshi's failure to declare the items in question nor whether the milk products were made in Holland or Saudi Arabia, but rather the following three elements:

- (1) Qureshi is the person who committed the violation;
- (2) Qureshi brought (imported) milk or milk products into Canada from a country other than the United States;
- (3) Qureshi did not produce to an Agency inspector a certificate of origin signed by an official of the government of the country of origin that shows that the country of origin is designated as free of foot and mouth disease.

[26] The Tribunal is of the opinion that the Agency has established all of the elements of the violation set out in the Notice of Violation. Elements 1 and 2 have not been challenged. The identity of the person who committed the violation is Qureshi. Furthermore, the Tribunal acknowledges, and Qureshi admits, that Inspector 17827 found in Qureshi's luggage, five cans of condensed he had imported from a country other than the United States, specifically, a product made in either in the Netherlands or in Saudi Arabia and bought outside the United States. Lastly, regarding the third element, Qureshi did not present any document or certificate of origin signed by an official of the government of the country of origin that shows that the country of origin is designated as free of foot and mouth disease, a certificate that would have allowed him to import the milk product in question.

[27] The very strict AMP system established by Parliament and set out in the Act protects Canada's agricultural and food systems against contamination and disease. The penalties set out in the Act, as in this case, can nonetheless have important repercussions for Canadians, especially someone like Qureshi. It seems that Qureshi is asking the Tribunal to waive, for humanitarian or medical reasons, the penalty imposed in this case and to show clemency by setting aside the \$800 fine. Unfortunately, once the Agency has established all the facts of the alleged violation on a balance of probabilities, the Tribunal's power is limited to confirming the notice of violation and ordering the offender to pay the fine specified in this Notice of Violation.

[28] Agency inspectors are charged with protecting Canadians, the food chain and agricultural production in Canada from the risks posed by biological threats to plants, animals and humans. There is no doubt that these duties must be exercised responsibly. The Tribunal is aware that the Agency has its own procedure for reviewing traveller complaints against inspectors who have conducted themselves improperly towards travellers. The

Tribunal's jurisdiction to review Notices of Violation comes from its enabling statutes. According to these laws, the Tribunal has neither the mandate, nor the jurisdiction, to set aside or dismiss a Notice of Violation for reasons relating solely to the conduct of Agency inspectors towards an applicant or for humanitarian, medical or financial reasons.

[29] Following a review of all written submissions of the parties, the Tribunal, therefore, finds that Qureshi committed the violation and is liable for payment of the penalty in the amount of \$800 to the respondent within thirty (30) days after the day on which this decision is served.

[30] The Tribunal wishes to point out to Mr. Qureshi that this violation is neither a criminal nor a federal offence but a violation punishable by a monetary penalty and that, after five years, he has the right to apply 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 26<sup>th</sup> day of September, 2012.

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Dr. Donald Buckingham, Chairperson