

IN THE MATTER OF THE NATURAL PRODUCTS
MARKETING (BRITISH COLUMBIA) ACT

AND

IN THE MATTER OF AN APPEAL TO
THE BRITISH COLUMBIA MARKETING
BOARD FROM A DECISION OF THE
B.C. BROILER MARKETING BOARD

BETWEEN:

J.M. Ponchet

Appellant

AND:

British Columbia Broiler
Marketing Board

Respondent

J.M. Ponchet

Appearing on
his own behalf

John J.L. Hunter

Counsel for
the Respondent

Members of the Board hearing
the Appeal:

Chas E. Emery -
Acting Chairman;
E. Mona Brun, Alfred
E. Giesbrecht, Martin
Hunter - Members

Donald A. Sutton

Counsel for the Board

This appeal was brought on pursuant to the provisions of Section 11 of the Natural Products Marketing (British Columbia) Act and was heard in Richmond, B.C. on Tuesday, August 12, 1980.

At the outset counsel for the Respondent took the position that the appeal was not commenced within seven days of notice by the Appellant of the decision of the Respondent as required by Section 11 of the Act and hence the Board had no jurisdiction to entertain the appeal. In support of this position counsel referred to a letter written by the Appellant to the British

Columbia Marketing Board dated May 6th, 1980 (which letter constituted the notice of appeal in these proceedings) and also to a letter from the Appellant to the Respondent dated April 17th, 1980 wherein the Appellant refers to fact that the Respondent had already made a "decision concerning my allotment of secondary roaster quota", by its letter of March 10th, 1980 to the Appellant. Counsels position therefore is that this appeal was not commenced within the mandatory seven day period of notice of the decision of the Respondent as required by Section 11 of the Act and that consequently the B.C. Marketing Board has no jurisdiction to entertain the appeal. Had there been no intervening circumstances the Board is of the opinion that counsel's argument would succeed. However on April 17th, 1980 the Respondent, not being satisfied with the March 10th decision wrote a letter to the Respondent requesting it to review and reconsider his allotment of secondary quota. Had the Respondent merely indicated in reply that it had made its final decision in the matter on March 10th this Board is of the opinion that this appeal would not be timely and that it would not have jurisdiction to hear the appeal. However, the Respondent indicated in its letter of April 24, 1980 to the Appellant that it had again reviewed the matter and stated that the correct secondary quota had been granted. As a result therefore this Board rules that the final determination in the matter was contained in the letter of April 24 and that this appeal was commenced within the statutory limitation period.

The Appellant, appearing on his own behalf, referred to the letter he wrote to this Board on May 6th, 1980, which constituted the notice of appeal and in which he explained the circumstances leading to the appeal. He has been a roaster grower since 1971 and up until January 1st, 1979, he received the increases in quota he was entitled to from the Respondent.

Some time in 1977 regulations came into effect requiring growers to provide increased barn space per bird from 1½ feet

to 1 3/4 feet. As a result the Appellant was required to add 4500 square feet to his existing facilities to comply with the regulations. Unfortunately, due to financial difficulties he was able only to finish 3000 square feet by the end of 1978. He finally finished the remaining 1500 square feet some time in the spring of 1979.

On the 31st of August, 1978, the Respondent issued Regulation #1 M - 121 - 1978 entitled "Quota Regulation", which reads as follows:

"TO: ALL ROASTER GROWERS, HATCHERIES AND AGENCIES

Pursuant to the Natural Products Marketing (British Columbia) Act and the British Columbia Broiler Marketing Scheme 1961, the British Columbia Board orders as follows effective on and after September 1, 1978.

Section (1) Definitions - In this Order

1. "Roaster" means that class of the regulated product, as defined in the British Columbia Broiler Marketing Scheme, known as pullet and cockerel broilers and being eight weeks and older.
2. "Roaster Quota" means quota issued pursuant to or under the authority of Regulation # 1 M - 43 - 1970.
3. "Secondary roaster quota" means the quota issued pursuant to or under the authority of this Order with respect to roasters.
4. "Space" all quotas are allotted on the basis of 1.75 square feet available per roaster on a grower's own premises.

Section (ii) Secondary roaster quota

1. Each roaster grower under this order is granted a 2,000 secondary roaster quota.
2. Secondary roaster quota is not transferable to any purchaser of a farm.

Section (iii) Utilization

1. Any quota issued pursuant to or under the authority of this Order shall come into force and be effective with respect to chick placements on farms on or after September 25, 1978.
2. All roaster growers have 120 days to provide space on their own premises at 1.75 square feet per roaster, for secondary

roaster quota issued under the authority of this Order.

3. All or a portion of a grower's secondary roaster quota allotted under this Order will be cancelled by the Board if space is not provided at 1.75 square foot per roaster.

4. Growers who add space on their own premises must contact the Board office to have this additional space measured by a Board representative.

5. Roaster grower licences issued effective January 1, 1979 will authorize roaster quota and secondary roaster quota in the amount as determined at 1.75 square feet per roaster according to the Board's measured square footage on each roaster grower's premises.

6. All roasters grown pursuant to roaster quota and secondary roaster quota shall be grown on and marketed from the premises of the roaster grower described in his grower's licence unless the Board otherwise consents in writing."

It will be noted from the regulation that in order to qualify for the secondary roaster quota of 2,000 birds, growers must have had available by December 31st, 1978, space on the basis of 1.75 square feet per roaster and particularly that by virtue of Section (iii) 5, licences issued on January 1, 1979, pursuant to the regulation would be determined at 1.75 square feet per roaster according to the measured square footage on each roaster grower's premises.

Unfortunately for the Appellant, he did not have the required space in place as required by December 31st and therefore only received as secondary quota that portion of the quota which he had provided space for. This Board is of the opinion therefore, that the Appellant had allotted to him the correct amount of secondary quota as set forth in Regulation #1M-121-1978.

The Appellant suggested that, despite the provisions contained in that Regulation, certain growers in his district had nonetheless received the full secondary quota even though they had not completed the necessary additions to their premises within the allotted time. The Respondent admitted that such was the case in one instance only, but that the grower concerned had appeared before it and explained the reasons for the delay in completion and requested an extension of time which had been granted before the 31st December. Unfortunately once again, the Appellant had not requested an extension.

This would have been the end of the matter had not the Respondent issued a further Regulation #1M-137-1979. This regulation was designed to convert a 14,000 pound cornish hen permit possessed by all growers to a 14,000 pound secondary roaster quota and in fact did, to all growers including the Appellant who received it in full. The confusion arose in the Appellant's mind by the words contained in the said Regulation in section iii(2) which reads:-

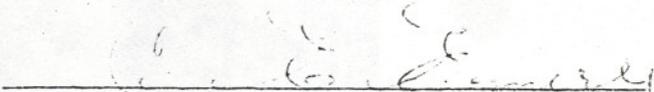
"2. Roaster grower licences issued effective January 1, 1980 will authorize roaster quota and secondary roaster quota in the amount as determined at 2.45 kilos (5.40 lbs) live weight per square feet according to the Board's measured square footage on each roaster grower's premises available November 1, 1979."

It is understandable that the Appellant derived from this wording that, once again, because he had not increased the size of his premises to the required amount in 1978 or completed them in 1979 that he was again being denied an increase in secondary quota. Such is not the case however and this Board is satisfied that the Appellant received in

secondary quota the amount called for pursuant to the Regulations issued by the Respondent. This Board strongly urges that, in issuing further regulations, the Respondent ensures that they are clear and are explained fully to all growers so that such an instance as has brought about this appeal will not be repeated. The result therefore is that the Appeal is denied and this Board orders that the \$100.00 deposit of the Appellant is forfeited.

DATED at Richmond, B.C. this 6th day of November, 1980.

By the BRITISH COLUMBIA MARKETING BOARD


Chas. E. Emery -- Chairman