

Martinus and Rita Van Herk v. BC Milk Marketing Board

Decision Date: June 19, 2006

Keywords: procedural fairness, quota revocation, reasonable apprehension of bias, credibility, de novo hearing

Issue:

Did the Milk Board err in cancelling the quota and producer licence of the appellant?

Facts:

The appellant was a successful new entrant through the Milk Board's Graduated Entry Program (GEP) in 2001. The Milk Board imposes a number of requirements on new entrants and makes it clear from the outset that entrants who fail to meet the requirements will have their quota immediately cancelled. The GEP requires that new entrants be "actively engaged" in milk production. The Milk Board became aware that the appellant was not actively engaged in milk production and as such, wrote to him advising him that his quota and producer licence would be cancelled. Following a "show cause hearing", the Milk Board cancelled the appellant's quota and producer licence.

Decision:

The panel ruled that there was a lack of fairness in the Milk Board's process because the Milk Board should have disclosed how it became aware that the appellant was not actively engaged in milk production and should have given him a full opportunity to show cause as to why the decision to cancel his GEP quota should be reconsidered. In the manner this occurred, the appellant's impression that the hearing process was unfair and his apprehension of bias were understandable. However, the panel ruled that this *de novo* hearing before BCFIRB was sufficient to cure the procedural deficits of the Milk Board. The appellant had every opportunity during the appeal to demonstrate to the panel that he was actively engaged in milk production and to put forward whatever evidence he considered appropriate.

Despite the finding of procedural unfairness in the process, the panel ruled that the Milk Board was correct in its determination that the appellant was not actively engaged in milk production. Neither the appellant nor his spouse were sufficiently connected to the operation: they were not active in the day to day affairs of the farm; they were not involved in herd health decisions; they did not pay expenses. The arrangement was a pure quota lease, not a lease of a farm and herd. The fact a farmer allows someone to milk his quota does not create sufficient control to place him on the continuum of "active engagement". To allow this interpretation would make the term meaningless.

Order: Appeal Dismissed.