

1980

80-01

4/9/80

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:

Roger Lefebvre

Appellant

AND:

British Columbia Broiler
Marketing Board

Respondent

Roger Lefebvre

Appearing on
his own behalf

R.A. Stafford, Ned Spencer
and Denis Cote

Appearing for
the Respondent

Members of the Board hearing
the Appeal:

F. Rex Werts, Chairman
Chas. E. Emery, Vice-
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 10 of the Natural Products Marketing (British Columbia)
Act and was heard in Richmond, B.C. on Tuesday, April 1, 1980.

The Appellant is appealing a decision of the Respondent,
dated February 1st, 1980, not to allow the Appellant the full
secondary quota that he claims to be entitled to. The facts
of the case are not in dispute. Prior to September, 1978 the
Appellant was in the broiler business with his brother. On

August 11th, 1978 he entered into an agreement to purchase the farm of T.A. Klassen for \$330,000.00 and the sale was to be completed by September 15, 1978. As a result of this arrangement he sold out to his brother and ceased to be a "registered grower" some time prior to September 1, 1978. In the process of arranging for a start-up of his new operation the Appellant met with the Respondent during the month of August to discuss various matters with it, one item in particular being the matter of having to build a new barn in order to meet the .75 square foot requirement per bird which his new farm did not meet. He presented a contract to the Respondent which showed that construction was to start on a new barn of 12,000 square feet which would allow his farm to house full secondary quota as required by the regulations. This construction was to start September 15th and he discussed certain features which the barn would contain.

Minutes of a meeting of the Respondent held on August 24, 1978 disclose that "Denis and Roger Lefebvre were in to discuss Roger selling his partnership to Denis and his buying T.A. Klassen's farm and transfer of 18,000 quota. The Board will approve these transfers on the proper papers being brought in." The proper papers referred to financing of the purchase and in fact all the subject clauses were released prior to September 1 and the necessary legal work done. At no time did the Respondent or any of its members indicate to the Appellant that he would not have transferred to him the quota and permit that was attached to the farm prior to his purchasing it. This was, before September 1st 18,000 quota, 7,000 permit plus 20%, totalling 30,000 birds. The 20% allowance has since been retracted.

On August 31, 1978 the Respondent issued Regulation #1M-120-1978 entitled "Quota Regulation" which became effective September 1, 1978. This regulation materially altered the quota

system. In section (ii) "Broiler Quota" Section 1 reads "1. A registered grower who holds secondary quota on this date, will have this secondary quota cancelled and broiler quota of an equal amount is granted to the grower." Section (iii) "Secondary Quota" reads "1. A grower who holds 48,500 broiler quota or less under this order is granted 7,500 secondary quota. 2. A grower who holds more than 48,500 broiler quota under this order is granted secondary quota in a sufficient amount to bring his broiler quota and secondary quota to a total of 56,000. 3. Secondary quota issued under this order is not transferrable to any purchaser of a farm."

The Respondent in interpreting this order with respect to the Appellant determined that, as of the date of the order, the Appellant was not a registered producer as he had by then sold his previous interest to his brother, and had not completed the purchase of his new farm. They therefore did not allow the transfer of the 7,000 permit and did not allow the transfer of the 7,500 secondary quota which would have been issued pursuant to the regulation. No evidence was adduced to indicate where this 7,500 secondary quota disappeared to. As a result of the Order therefore the Appellant ended up having transferred to him on September 26, 1978 a "Broiler Quota: 18,000 every cycle". The fact that the Appellant and four others who were in the process of purchasing farms on September 1, 1978 were harshly done by was reflected in a minute of September 14 of the Respondent. In this minute 4 of these people, including the Appellant were granted 3,750 secondary quota which is 1/2 of what the Appellant maintains he should have received. The Appellant therefore in this Appeal is asking the Board to order the Respondent to 1. issue to him a further 3,750 secondary quota and 2. order the Respondent to allow a re-instating of the birds lost since September 1, 1978 but only as space in barns allows the placing of birds.

In argument Mr. Spencer stated that the case had been a difficult one for the Respondent but it had determined that, on a strict interpretation of Regulation #1M-120-1978, as the Appellant was not a "registered grower" as of the effective date of the regulation, he could not have transferred to him the secondary quota in question. It had also determined that as the farm which the Appellant bought had been operating on a permit basis, and as regulations prohibited the transfer of permit, the 7,000 birds in question could not be transferred. Mr. Spencer further indicated that it was on compassionate grounds only that 1/2 the secondary quota was subsequently issued. The Appellant argued that at no time was it ever indicated to him that he would not have transferred to him both the quota and permit previously attached to the farm he purchased, even though the Respondent must have been aware, when they were talking to him about the matter, what the effect of the new regulations would be. He also argued that the Respondent should have warned him that this would be the result when it indicated to him that he was paying too large a price for the farm.

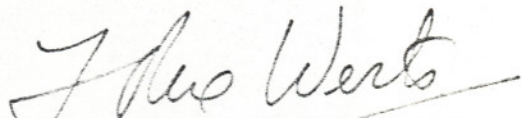
This Board has determined that the Appellant should succeed in this appeal. It has been the practice of the Respondent for many years to intrude itself into the details of the sale and purchase of a broiler farm (which it did in this instance) and because of this the Board is of the opinion that the Respondent has a responsibility and a duty toward a grower to advise him of the situation in which he might find himself upon completion of a purchase of a farm particularly with respect to quota. In this instance the provisions of Regulation #1M-120-1978 must have been known to the Respondent when it was discussing particulars of the purchase with the Appellant, and the consequences should have been pointed out to him. It is felt that the Respondent gave the Appellant

every reason to believe that he would have transferred to him not only the 18,000 primary quota but also the permit for 7,000. It is appreciated that, prior to the issuance of the new regulation, on a transfer of a farm any permit in place was cancelled. It is also understood however, that in most instances the permit would be re-issued. It can be presumed that, if the sale had been completed on August 31st rather than September 15th the Appellant would have had transferred to him the 18,000 primary quota, have had the permit cancelled and re-issued and presumably, by virtue of the new regulation have had this converted to quota and also have had issued to him a 7,500 secondary quota. The Respondent, when confronted with the injustice of the situation as it affected the Appellant, somehow found a 3,750 secondary quota and gave it to him. This Board finds that the Appellant is not asking that he be given anything to which he is not entitled or that he be given undue consideration. It also is of the opinion that there was an error in judgement on the part of the Respondent and therefore hereby orders the Respondent:-

1. To forthwith issue to the Appellant a further secondary quota of 3,750 birds.

2. To allow the Appellant to recapture birds lost since September 1, 1978 but only as space in barns allows the placing of birds according to regulations.

DATED at Richmond, B.C. this 9th day of April, 1980.



F. Rex Werts, Chairman
B.C. Marketing Board