

93-11
3/24/97

IN THE MATTER OF THE NATURAL PRODUCTS MARKETING (BC) ACT

AND

IN THE MATTER OF A DETERMINATION OF ACTUAL COSTS

BETWEEN:

MR. ALFRED REID

APPELLANT

AND:

BRITISH COLUMBIA BROILER HATCHING EGG COMMISSION

RESPONDENT

DECISION

APPEARANCES:

For the
British Columbia Marketing Board

Mr. Doug Kitson, Chair
Ms Karen Webster, Member

For the Appellant

Ms Barbara J. Curran, Counsel
(via written submission only)

For the Respondent

Mr. Edward F. Macauley, Counsel
(via written submission only)

DATE AND PLACE OF HEARING:

February 3, 1997
Victoria, British Columbia

INTRODUCTION

1. The matter before the British Columbia Marketing Board (BCMB) is the determination of the amount of costs payable to the Appellant in accordance with a September 19, 1995, BCMB decision stating, in part:

“With respect to the costs incurred by the Appellant related to the hearing of April 26 and June 6, 1995, the Respondent is ordered to pay these costs, the actual amount being subject to the finalization of the BCMB’s ‘Tariff of Costs’, to the Appellant. The BCMB retains jurisdiction to determine the amount and will do so in due course.”

2. In a letter dated August 1, 1996, from the BCMB to the Appellant and the Respondent, the BCMB advised as follows:

“It is assessed that the BCMB’s discretion with respect to this issue is limited to a decision to award costs or not. Without a tariff approved by the LGIC, costs will be “actual costs”.”

3. This matter was addressed in written submissions from Counsel for the Appellant dated January 17, 1996, and January 30, 1996. (Noted that they were incorrectly dated 1996 and were received initially by fax on January 17, 1997 and January 30, 1997 respectively.) A written submission from Counsel for the British Columbia Broiler Hatching Egg Commission (Commission), dated January 21, 1997, was also received by the BCMB.

ISSUE

4. The issue is what are the actual costs payable to the Appellant.

BACKGROUND

5. The BCMB decision awarded costs to the Appellant subject to the finalization of the BCMB’s “Tariff of Costs”.
6. In a letter dated August 1, 1996, the BCMB advised the parties that without a tariff approved by the Lieutenant Governor in Council (LGIC) in accordance with Section 8(3)(c) of the *Natural Products Marketing (BC) Act*, costs would be actual costs.

ARGUMENT

7. Counsel for the Appellant argues, in her January 17, 1997, submission, as follows:

“Mr. Reid’s Bill of Costs reflects the actual costs which he has had to pay relating to the April 26 and June 6, 1995 hearings, including those costs which he has had to incur in attempting to ensure that the Commission complies with the Board’s Order awarding costs. Throughout the proceedings before the Board and the Supreme Court, and specifically since the Board’s September 19, 1995 decision, Mr. Reid has attempted to proceed expeditiously and see this dispute resolved as quickly as possible, but has been thwarted by delay and inactivity on the part of the Commission and, to some extent, the Board itself. The costs claimed since August 2, 1996 reflect Mr. Reid’s efforts to obtain compliance with the Board’s Order and bring this matter to a close.”

8. Counsel for the Appellant further argues:

“Mr. Reid seeks interest on the costs award. Although the award was made on September 19, 1995, he has yet to see a penny of it. On June 6, 1995, at the closing of the hearing, the Board requested a summary of Mr. Reid’s costs of both hearings. That summary was forwarded by letter dated June 6, 1995, with a copy to counsel for the Commission, setting out Mr. Reid’s costs of the April/May, 1995 hearing as \$8,448.48.”

9. Counsel for the Appellant also argued that as “of September 19, 1995, the Commission had the option to set aside the \$8,448.48 in an interest-bearing account pending finalization of the Board’s Order.” The benefit of the accrued interest, had this option been followed, should have been Mr. Reid’s.
10. In his January 21, 1997, response, Counsel for the Respondent argues that the September 19, 1995, decision of the BCMB “in respect of costs only deals with those costs incurred and related to the hearing of April 26 and June 6, 1995. The Order does not grant any costs after that date.”
11. Counsel for the Respondent also argues that the Bill of Costs rendered on August 2, 1996, in the amount of \$8,635.10, is the only Bill of Costs that should be before the BCMB.
12. Counsel for the Respondent expresses the following concerns with the August 2, 1996, Bill of Costs:
- “a. the amount of time expended, which totals 52.7 hours;
 - b. the disbursements, in particular the cost of the photocopying and facsimile charges.”

13. Counsel for the Respondent further argues that “the amount of time expended by the Appellant’s counsel was excessive and not necessary or proper in the conduct of the Appeal heard in April and June of 1995,” especially considering the issues involved and the history and background knowledge of both the Appellant and his Counsel.
14. With respect to the matter of interest, Counsel for the Respondent submits “that the Appellant is not entitled to interest on any of the Bill of Costs. The amount of the Costs of the Appellant were not known as of September 19, 1995” and indeed not until the BCMB determination of August 1, 1996, was there any amount owing by the Commission.
15. Counsel for the Respondent argued also that the BCMB has no jurisdiction to award interest.
16. Counsel for the Appellant replied, in her January 30, 1997, submission, that the costs since August 1, 1996, “flow from and attempt to ensure compliance with” the BCMB’s September 19, 1995, decision. “In that sense, the costs claimed are related to the April 26 and June 6, 1995 hearings.”
17. Counsel for the Appellant argues that “there is no substance to the Commission’s assertion that the amount of time set out in the Appellant’s Bill of Costs is excessive” and that the January 29, 1997, Affidavit from Ms. Wendy Baker, Counsel for the Appellant at the April 26 and June 6, 1995, hearing attests to the contrary.

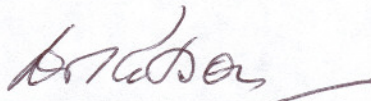
FINDINGS

18. The BCMB finds that it has no power to award interest.
19. The BCMB finds that costs should be awarded according to its September 19, 1995 decision.
20. The BCMB finds that any costs incurred by the Appellant after this date are not relevant to this appeal.
21. In arriving at these findings, the BCMB considered the case law submitted by the parties.

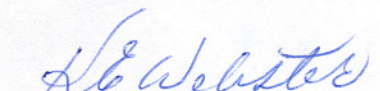
DECISION

22. The British Columbia Broiler Hatching Egg Commission is ordered to pay the Appellant's actual costs, consisting of total fees, disbursements and tax in the amount of \$8,448.48.
23. Costs are payable once an order for costs is awarded by the British Columbia Marketing Board.

Dated at Victoria, British Columbia, this 24th day of March 1997.



Doug Kitson, Chair



Karen Webster, Member