

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

AND

IN THE MATTER OF AN APPEAL FROM THE BRITISH COLUMBIA
CHICKEN MARKETING BOARD CONCERNING QUOTA ALLOCATION

BETWEEN:

PROGRESSIVE POULTRY FARM LTD.

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

APPEARANCES:

British Columbia
Marketing Board

Mr. Doug Kitson, Chair
Ms. Christine Moffat Member
Ms. Karen Webster, Member
Mr. Jim Collins, Panel Secretary

Appellant

Mr. Bud Krahn, President/Owner of
Progressive Poultry Farm Ltd.

Respondent

Mr. John J.L. Hunter, Counsel for
the British Columbia Chicken
Marketing Board

Date and Place of
Hearing:

July 16, 1996
Vernon, British Columbia

The matter before the British Columbia Marketing Board (BCMB) is an appeal by Progressive Poultry Farm Ltd. (Mr. Krahn) from a decision, as communicated in a letter dated April 4, 1996, of the British Columbia Chicken Marketing Board (Chicken-Board) concerning the allocation of secondary quota.

Preliminary

1. As a preliminary matter, the issue was raised as to whether Mr. Krahn's Notice of Appeal was received within 30 days of April 16, 1996, when the Appellant first received the Chicken Board's April 4, 1996 letter.
2. The Panel found that the Notice was received in time due to the special circumstances introduced at the hearing.

Background/Discussion

3. On April 1, 1994, the Chicken Board issued Order #268. This order advised all growers that existing secondary quota would be rolled into primary quota. This order also advised that new secondary quota, up to the amount of 9644 kgs, would be issued to qualified growers. This issue of new secondary quota would be contingent upon growers having the requisite space ("2.57 kgs live weight per square foot") by January 1, 1995. This deadline was later extended to April 1, 1995, with some farms not being measured until after that date.
4. A June 1, 1989 order of the Chicken Board states that "Useable Space" (sic):

"is defined as building space, that has water, heating, feeders, lighting, ventilation, litter, feed bins and ready for chick placements."
5. On April 4, 1995, Mr. Krahn's barn space was measured by Mr. Ron Davies, the Chicken Board's Production Unit Inspector. This measurement included a portion of a machine/storage shed, which was being converted to a barn, and two barns already used for growing chicken.

6. In his report on the April 4, 1995 measurement, Mr. Davies stated the following with respect to the machine/storage shed:

"#3 is part of a machine and storage shed that has been partially converted. Equipment has not been installed but some is scattered around floor area. Will be suitable if completed."
7. Subsequent to the measurement and report, the Chicken Board determined that this machine/storage shed did not properly constitute usable space. On or about May 11, 1995, the Chicken Board issued Mr. Krahn with a grower's licence with secondary quota in the amount of 6522 kgs. The amount of secondary quota denied to Mr. Krahn because of inadequate usable space amounted to 3122 kgs.
8. In March of 1996, Mr. Krahn asked the Chicken Board to reconsider its 1995 decision to not issue the additional 3122 kgs of secondary quota.
9. On April 16, 1996, Mr. Krahn first received the Chicken Board's decision, as communicated in a letter dated April 4, 1996, denying his request for the additional secondary quota. This Appeal results.

Issue

10. Did Mr. Krahn comply with Chicken Board Order #268, such that on April 1, 1995 he had the usable space to accommodate a full allotment of secondary quota (9644 kgs).

Findings

11. This Panel finds that on April 1, 1995, Mr. Krahn did not have the usable space to accommodate a full allotment of secondary quota.
12. This Panel also finds that Mr. Krahn did not intend to use the machine/storage shed for the growing of chicken. It was his stated intention to secure full secondary quota by having the requisite usable space, but then grow the additional birds in his original two barns.

13. Counsel for the Chicken Board submitted that the conversion of the machine/storage shed was a sham. Mr. Krahn was attempting to adhere to the letter of Order #268, completely ignoring its intent (i.e. to regulate chicken densities).
14. Had this Panel not made the above finding, we would have found this Appeal out-of-time as the substantive decision from which the Appeal was made arose in May of 1995. No special circumstances were demonstrated so as to justify an extension of the time for filing an appeal.

Decision

15. This Appeal is denied.
16. The Chicken Board has not sought an order for costs and as such, no order shall be made.

Dated at Victoria, British Columbia, this 24th day of July, 1996.

(Original signed by):

D. Kitson, Chair
C. Moffat, Member
K. Webster, Member