

11/4/83

BRITISH COLUMBIA MARKETING BOARD IN THE MATTER OF AN
APPEAL PURSUANT TO THE NATURAL PRODUCTS MARKETING (BC)
ACT, R.S.B.C. 1979, c. 196, s. 11

BETWEEN:

WALTER REGIER, doing business as REGIER POULTRY LTD.

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

APPEARANCES:

Walter Regier on behalf of the Appellant

John J. L. Hunter on behalf of the Respondent

Joseph J. Arvay on behalf of the British Columbia
Marketing Board

1. The Appellant, Walter Regier, appealed a decision of the British Columbia Chicken Marketing Board (the "Commodity Board") dated June 9th, 1983 wherein the Commodity Board refused to increase the Appellant's quota to raise broiler-breeder birds in excess of 18,500. The Appellant had requested permission to raise an additional 2,300 birds. The Commodity Board held that the Appellant was entitled to receive only an additional 700 broiler-breeder quota. The Commodity Board relied on the British Columbia Broiler Marketing Board Regulation 28H-1979, B.C. Reg. 158/82 in arriving at its decision. The relevant portions of that Regulation read as follows:

"(ii) Secondary broiler-breeder quota:

1. Each registered broiler breeder grower with less than 15,500 broiler breeder quota under this order is granted a 3,000 secondary broiler breeder quota.

2. Each registered broiler breeder grower with less than 18,500 broiler breeder quota but more than 15,500 broiler breeder quota under this order is granted an amount of secondary broiler breeder quota to bring the broiler breeder and secondary broiler breeder quota to the 18,500 maximum allowed."

2. In its submission to the Board the Appellant argued that he was entitled at law to a maximum quota of 20,932. He arrived at this figure by relying on an earlier Regulation of the Commodity Board, numbered Regulation 24H-1978. Although this order of the Commodity Board was cancelled by B.C. Reg. 158/82, the Appellant nevertheless argues that it was this earlier order which was relevant since his original request for additional quota was made while Regulation 24H-1978 was in force.

3. If the Appellant is appealing a decision made with respect to this earlier Regulation than it is questionable whether or not the appeal is brought within thirty day time limit specified in the Act. However, it is unnecessary to decide this point because it is clear, in our view, that the substance of Regulation 24H-1978 is no different from the substance of Regulation 24H-1979. Relevant portions of Regulation 24H-1978 read as follows:

"...

(i) ...

- (2) The limit one person firm or corporation can hold of broiler breeder quota and broiler breeder permits is 3.75% of the total allotted quota and permits or 18,500.
- (3) All growers with less than 18,500 broiler breeder quota, but more than 15,500 broiler breeder quota, can place an amount

of broiler breeder permit to bring the broiler breeder quota and broiler breeder permit to the 18,500 maximum allowed."

4. The Minutes of the meeting of the Commodity Board preceeding the passage of Regulation 24H-1978 read in part as follows:

"In regard to the increase in breeder pullet requirements the Board approved the following:

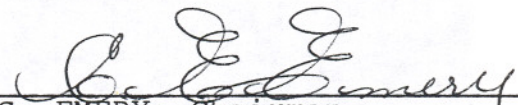
- (1) Maximum of quotas and permits for breeders is 18,500 (3.75 of quota permits).
- (2) ...
- (3) Growers under the 18,500 but over 15,500 can place an amount of permit to bring them up to the 18,500 maximum."


5. It is clear in our minds that Regulation 24H-1978 authorized a maximum quota of only 18,500. The Regulation should be interpreted as reading "3.75% of the total allotted quota and permits, or 18,500, whichever is greater". It was explained to us at the hearing by the Commodity Board that 18,500 figure was arrived at by multiplying 3.75% times the total allotted quota and permit. At the hearing, that figure was computed to be 18,529. For the purpose of the Regulation, it was rounded off to 18,500.


6. Prior to applying for extra quota pursuant to Regulation 24H-1978 the Appellant's quota was 17,800. It is clear, therefore, that the Commodity Board acted in accordance with Regulation 24H-1978 or Regulation 28H-1979, in allocating to the Appellant an additional 700 quota as opposed to the requested 3,000 quota. In our view, this conclusion is sufficient to dispose of the appeal against the Appellant.

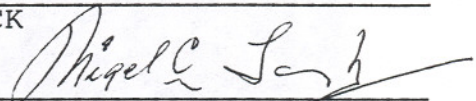
7. The Appellant has also argued that the allocation of an 18,500 quota is unreasonably low and further, that it is discriminatory to give him only 700 quota while at the same time allocating more than that to other farmers whose initial quota was less than the Appellant's initial quota. In effect the Appellant is asking this Board to invoke its powers pursuant to s. 13(2) of the Natural Products Marketing (BC) Act to amend, vary or cancel an order, rule or regulation made by the Commodity Board. We would decline to do so. The Commodity Board has adopted the concept of "the family farm" by limiting the amount of quota to 18,500 and at the same time allowing the smaller producers to catch up to the larger producers with a result that all the farms would eventually be of the same modest size. This is a system which is similar to the system for broiler growers which has functioned for nearly 20 years. It was not demonstrated to us that the quota of 18,500 resulted in a shortage of birds. There is nothing before us to suggest that the Commodity Board's regulation was other than consistent with the purpose and object of the Natural Products Marketing (BC) Act.

8. The appeal is therefore dismissed.


 C. EMERY, Chairman


 M. BRUN


 H. BLACK


 N. TAYLOR

DATED: November 4th, 1983.