

5/24/84

IN MATTER OF THE NATURAL PRODUCTS MARKETING
(BC) ACT AND IN THE MATTER OF AN
APPEAL OF THE DECISION OF THE BRITISH COLUMBIA
CHICKEN MARKETING BOARD

BETWEEN:

L.E. RICHARDSON

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

D E C I S I O N

1. The Appellant is a licensed grower of broiler breeders in the Province which is a class of chicken raised and used for the production of broiler hatching eggs. He has a quota to raise 12,600 such broiler breeders.

2. On February 8, 1984, he wrote to the B.C. Chicken Marketing Board with the following complaint:

"Dear Sir:

Broiler breeder producing hatchery eggs under the B.C. Broiler Marketing Scheme, 1961, can only ship to the hatchery eggs averaging 22 ounces per dozen or over. Approximately the first six eggs per hen, or 4% of total eggs laid, are underweight and are either destroyed or sold for a fraction of their value as commercial eggs.

Rather than continuing to sell these eggs at a reduced price and a substantial loss to the farm, I am requesting that a permit be granted in order to take these regulated, undersized, hatching eggs to their proper conclusion - a broiler chicken. As these flocks may be small, they may not fit into the Marketing Board plans. However, I see no problem in selling live broilers to either ethnic groups or as finished product through farm door sales."

3. At a meeting of the B.C. Chicken Marketing Board, held February 16, 1984, the Appellant's request was considered. The Board held that the Appellant's request for a permit to have undersized hatching eggs incubated and raised as broiler chickens be denied. That decision was communciated to the Appellant by the Manager of the B.C. Chicken Marketing Board in a letter dated February 24, 1984.

4. At the hearing of the appeal, the B.C. Chicken Marketing Board explained that a marketing contract is entered into between the hatchery and the broiler breeder grower pursuant to which the broiler breeder grower agrees "to ship broiler hatching eggs averaging 22 ounces per dozen and over" and also "that it will not provide broiler hatching eggs unsuitable for the hatchery ...". It was the B.C. Chicken Marketing Board's view that this provision in the contract was a fair and reasonable one and that the contract was designed primarily for the protection of the broiler breeder grower.

5. The B.C. Chicken Marketing Board pointed out the price set for hatching eggs as of May 7, 1984 was equal to the cost of production less a 5% hatchability bonus. The cost of production is determined using a formula previously developed by the B.C. Chicken Marketing Board with the assistance of Price Waterhouse. It was explained, and this was not disputed by the Appellant, that, assuming the cost of production covers a grower's actual costs, the Appellant would not in fact lose any money by not being able to sell the 4% of undersized eggs that may be laid by any particular hen. The cost of producing those eggs is included in the cost of production formula.

6. The B.C. Chicken Marketing Board expressed the concern that if the Appellant was granted a permit to hatch his undersized eggs into broiler chicks and subsequently raise these chicks to broiler weights, then the other 35 registered broiler hatching egg growers would be requesting similar permits. In their view, the result would be chaos for the current supply management system that is now in place.

7. A similar concern, although it was not articulated by any of the parties, is that if a broiler breeder grower is entitled a permit to hatch his undersized eggs, then similar considerations might apply to warrant a producer of broilers to get into the business of raising broiler breeders.

8. The B.C. Chicken Marketing Board has authority inter alia to determine the quantity of the regulated product that shall be produced and to prohibit the production of any grade, quality or class of "regulated product": British Columbia Chicken Marketing Scheme, 1961, s. 4.01(a). The "regulated" product is defined to mean "any class of chicken under 6 months of age not raised or used for egg production and also means broiler breeders and broiler hatching eggs ...".

9. The B.C. Chicken Marketing Board also has the authority to "establish, issue, permit, transfer, revoke, or reduce quotas to any person as the Board in its discretion may determine from time to time ...": s. 4.01(cc) of the British Columbia Chicken Marketing Scheme, 1961.

10. Finally, by virtue of s. 4.01(1) of the Scheme, the B.C. Chicken Marketing Board is given the power to "make such orders, rules and regulations as are deemed by the Board necessary and advisable to promote, control and regulate effectively the production ... of the regulated product...".

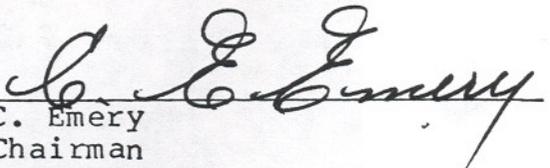
11. Reference should also be had to the British Columbia Broiler Marketing Board Regulation, B.C. Reg. 179/82, which deals with quotas and permits.

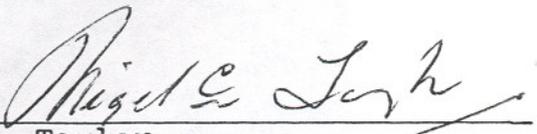
12. The B.C. Chicken Marketing Board advises that all of the quota for broiler chicken production, which has been allocated to the Province pursuant to federal-provincial agreement, has in turn been allocated to registered broiler producers in the Province. Hence, the B.C. Chicken Marketing Board did not have any available quota to allocate to the Appellant to allow the Appellant to produce broiler chickens. The only way the Appellant could have been given a quota to produce broiler chickens would be if the quota presently held by existing broiler growers was correspondingly reduced.

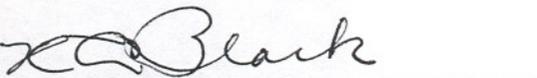
13. This Board is of the view that the B.C. Chicken Marketing Board had the legal authority to deny to the Appellant a permit or quota to produce broiler chickens from those undersized eggs which were not suitable for the hatchery. We are also satisfied that the Board's decision was sound as a matter of policy and consistent with the effective promotion, control and regulation of this particular regulated product in the Province. It is also consistent with the principle enunciated by this Board in

White Spot Limited v. British Columbia Broiler Marketing Board, January 4, 1979, where the Board stated that it was not "in favour of integration in the industry ...".

14. For the above reasons, the appeal is dismissed.


C. Emery
Chairman


N. Taylor
Vice-Chairman


H. Black


M. Brun

May 24, 1984
Richmond, British Columbia