

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

AND

IN THE MATTER OF AN APPEAL TO THE
BRITISH COLUMBIA MARKETING BOARD
AGAINST THE DECISION OF THE
BRITISH COLUMBIA CHICKEN MARKETING BOARD
TO IMPLEMENT A SPOT MARKET SUPPLY PROGRAM

BETWEEN:

SUNRISE POULTRY PROCESSORS LTD.
HALLMARK POULTRY PROCESSORS LTD.
COLONIAL FARMS LTD.
SUPERIOR POULTRY PROCESSORS LTD.
UNITED POULTRY CO. LTD.
LILYDALE CO-OPERATIVE LTD.

APPELLANT

AND

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances:

B. Koehler, Lilydale Co-operative Ltd., B.C.
K. Noel, Lilydale Co-operative Ltd., Victoria
M. Pollon, Hallmark, Colonial, Superior and
United
P. Shoore, Sunrise Poultry Processors
A. Fauchon, Horizon Hatcheries Ltd.
C. Goebel, Legal Counsel

APPELLANT

A. Bartel, Chairman
J. Hunter, Legal Counsel
D. Stander, Legal Counsel

RESPONDENT

M. Hemani, Shergar Enterprises
S. M. Johnson, Legal Counsel

INTERVENOR

DATE OF HEARING

APRIL 2 & 3, 1990

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Sunrise Poultry Processors et al. against the decision of the British Columbia Chicken Marketing Board to implement a Revised Spot Market Supply Program ("Revised Program") as set out in notices dated the 1st and 16th days of February, 1990.
2. The appeal was filed with the Board on February 26, 1990 and was heard in Vancouver, British Columbia on April 2 and 3, 1990.
3. The Appellants and Respondent were represented by Counsel and were permitted to present witnesses and make oral and written submissions on the facts and the law. With the concurrence of the Appellants and the Respondent, the Board granted Shergar Enterprises Ltd. ("the Intervenor") full status as an Intervenor.
4. The Appellants argue that:
 - (a) The orders implementing the Revised Program, were unfair and without natural justice, in that the Appellants were not afforded a hearing. The Appellants state that the meeting of February 1, 1990 between the Respondent and Intervenor, should have been held with the participation of the Appellants.
 - (b) The Orders of the Respondent were prejudicial to the Appellants in that they provided a sole and exclusive benefit to the Intervenor to the detriment of the Appellants. The benefit being the ability to obtain and receive an assured source or from an assured source live chickens, whereas the Appellants are required to compete to obtain their chickens from growers.
 - (c) The Orders of the Respondent were passed for an ulterior motive; that there was something over and above or behind the notion of passing the order. That because the Provincial Government has a financial interest in the Intervenor, that the Board's Order is less for the proper promotion, control and regulation of the regulated product than it was to keep open the processing plant owned by the Intervenor.

(d) The original Spot Market Supply Program, as set out in the Board's memo dated January 10, 1990, is workable, in that three processors together have available to them in excess of 800,000 birds, rather than the 190,000 birds that Lilydale Cooperative had available.

5. The Appellants request:

(a) That the Revised Spot Market Supply Program be rescinded and replaced with the original program that was agreed to on January 4, 1990 and made subject of the memorandum of January 10, 1990.

(b) That the live birds introduced into the system for the purposes of the Revised Program be shared amongst all the processors proportionately to their market share.

6. The Respondent argues that:

(a) There is no obligation, in the circumstances, for the Respondent to conduct a hearing, in that the establishment of the original Program and the Revised Program was an administrative act. The Respondent states that the Appellants were given opportunity to be heard on January 4, 1990 and February 6, 1990, and the further states that if there was any defect in the hearing, that defect is remedied by the hearing before this Board.

(b) The Revised Program was implemented with the objective of keeping open a plant facing some economic difficulties which is not an ulterior motive in that it is within the normal jurisdiction of the Respondent. The policy objective of assisting a processor to be economically viable goes to the very heart of the stability of the industry and is intrinsic to that which the Respondent should be concerned with.

(c) The Appellants themselves, agreed to and committed themselves to this type of program in order to remove the need for supplemental import permits.

- (d) The unworkability of the original program was demonstrated when Lilydale Co-operative Ltd. had to short the Intervenor's plant to meet the requirements of a retail customer in a month when demand is historically low.
- (e) The Intervenor's plant on Vancouver Island accounts for less than five percent of the processed chicken in British Columbia. In order to be economically viable the plant requires 50,000 chicken per week, which is approximately two percent of the market.
- (f) The program is not unfairly prejudicial to the Appellants, in that overproduction of 1.8 million kilograms has already been absorbed by the marketplace, and the additional 15,000 - 20,000 birds per week processed by the Intervenor will not be so great as to have a prejudicial impact on the Appellants.

7. The Intervenor argues that:

- (a) The application for Supplementary Import Permits was made only after considerable attempts to source product in British Columbia failed. The Intervenor supports the Respondent's policy objective to avoid the need for supplemental imports in order to preserve the integrity of the marketing board system in the Province.
- (b) 50,000 birds per week is the minimum number of birds required to remain a viable entity. Existing sources supply 30,000 - 35,000 birds per week and it is the difference of 15,000 - 20,000 birds per week that the program will temporarily address.
- (c) The original program to supply eviscerated product does not preserve the policy objective of having a number of processors and realistic competition among processors in that processors realize profit from the slaughter and evisceration of live chickens, and that utilizing eviscerated product will in time place the Intervenor as a distributor or secondary processor of chicken.

8. After consideration of the arguments, evidence and the facts, the Board finds that none of the facts appear to be in dispute. It is the decision of this Board to accept the arguments of the Respondent as set out herein, and confirm the decision of the Respondent to implement the Revised Program.
9. In accordance with this Board's rules of appeal, the Appellant's deposit shall be forfeit.

Signed this 16th day of May, 1990, in Victoria, British Columbia.

(Original signed by):

G. Aylard
J. Reger
O. Austring