

1978  
78-01  
114179

IN THE MATTER OF THE NATURAL PRODUCTS  
MARKETING (BRITISH COLUMBIA) ACT

AND

IN THE MATTER OF AN APPEAL TO THE  
BRITISH COLUMBIA MARKETING BOARD FROM  
A DECISION OF THE B.C. BROILER MARKETING  
BOARD

BETWEEN:

White Spot Limited

Appellant

AND:

British Columbia Broiler  
Marketing Board

Respondent

D. Michael Goldie, Esq.Q.C.

Appearing for the  
Appellant

George S. Cumming, Esq.Q.C.

Appearing for the  
Respondent

Members of the Board hearing  
the Appeal:

Geo. Okulitch, Esq. -  
Chairman

Dr. Peter Arcus - Vice-  
Chairman

Mrs. M.L. Mace - Member

C.E. Emery, Esq. - Member

Martin Hunter, Esq.-Member

A.E. Pepin, Esq.- Member

Donald A. Sutton, Esq.

Counsel for the Board

This appeal was brought on pursuant to the provisions of Section 10 of the Natural Products Marketing (British Columbia) Act and was heard in Richmond, B.C. on Tuesday, December 12, 1978.

The notice of appeal in the matter is dated October 12, 1978 and contains the following paragraph, "The Broiler Marketing Board's decision of October 5, 1978 to which we refer; reads: 'in regard to White Spot's letter of September 20, 1978 requesting an open permit to grow broilers on their premises, the Board's decision is not to approve this request'." This statement does not include specifics of what was requested of this Board on appeal. However, in the written submission presented to the Board, the Appellant set out in detail what it was requesting in the following manner:-

"ORDER SOUGHT

White Spot Limited appeals to the Provincial Marketing Board to approve the request made by White Spot Limited to the Broiler Marketing Board in its letter of September 20, 1978. To meet the request made by White Spot Limited, we are of the opinion that three separate steps should be contemplated.

- (i) An immediate increase in growing permit of 11,300 birds per cycle so as to enable White Spot to fully utilize its existing growing capacity.
- (ii) A future increase in White Spot Limited's growing permit of an additional 96,000 birds per cycle to permit full utilization of the unused agricultural land at Newton Farms. This increase to be phased in over the next two years.
- (iii) A direction to the Broiler Marketing Board that it should move as quickly as practicably possible toward the implementation of a policy which would enable White Spot Limited to grow and control production of enough broiler chickens to fully satisfy all of the present and future demand generated by its market development activities."

The letter of September 20, 1978 above referred to had indicated to the Respondent the Appellant's concern over its inability to obtain an increase in its broiler growing allotment, stated that it believed the equitable position that should be taken would be an open permit for it to grow broilers within the limitations of its growing capacity and its internal marketing demand, and closed with a plea that such an open permit be granted. This request was refused by the Respondent on October 5, 1978.

Evidence presented to the Board by both the Appellant and the Respondent outlined the history of the growth of the broiler industry and particularly the method of allotment of quota since quota was established on January 1, 1962. Through a process of increasing overall quota as the market expanded and at the same time decreasing the maximum quota allotted to individual producers the Province-wide quota allotment as at June 12, 1978 stood at approximately 4,500,000 annual production (birds) of which the Appellant holds 2.89%. The maximum quota allotment held by any other producer in the Province (with one minor exception) is 1.25%.

In support of its request for an open permit the Appellant outlined its history in the Province from its inception to date. It stated that whereas in 1962 it grew 100% of its requirements it is now permitted to grow less than 25% and that therefore the denial of an increase is unfair. It further stated that by virtue of its capital investment made in anticipation of further growth it now has unused capacity for broilers which it wishes to utilize but cannot by virtue of the arbitrary imposition by the Respondent of a 1.25% production restriction. Further arguments in favour of an open permit were adduced culminating in the outlining of the order sought.

The Respondent placed in evidence all the relevant documents touching the matters in question in the appeal including licence applications, orders increasing quota, regulations issued and correspondence between the parties. In support of the Respondent's

decision not to allow the request of the Appellant, counsel for the Respondent called as a witness its manager who reviewed the allotments of quota since 1962 and gave reasons for the decisions made which culminated in the present decision to limit any one producer to 1.25% of the market. It was pointed out that this percentage was based on the size of an economic family unit as recommended by the Canadian Broiler Council, and was an attempt to support the family farm concept in the growing of broilers and prevent the integration of the industry.

This Board has now fully considered the evidence and argument placed before it and has come to the decision that the Respondent properly exercised its discretion in the matter and was therefore justified in refusing the request of the Appellant for an open permit to grow broilers. The reasons for the decision of the Board are summarized as follows:

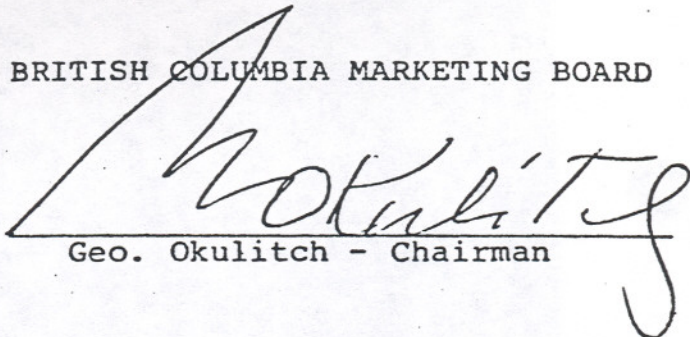
1. The Board is in favour of the "family farm concept" and wishes to support the Respondent in its attempt to maintain it.
2. The Board is not in favour of integration in the industry and is aware of its dangers as it has outlined in previous decisions. The granting of the open permit in this instance could lead to other requests in the future.
3. The Board recognizes that while the Appellant may not be utilizing its present facilities to the fullest, the same is true of some other producers who may well wish to increase their quota.
4. A review of the evidence shows that the Appellants total production has increased over the years and will be further increased by the recent order to cut the cycle of production to 10 weeks.
5. The Board is of the opinion that the Appellant should not be looked at any differently than any other producer and should be subject to the same privileges and limitations. It is also of the opinion that any problems of supply which the Appellant may

have had in the past can be remedied by greater co-operation and communication between it and the Respondent and other producers in the future.

As a result of this decision the \$100.00 deposit of the Appellant is forfeited to the Minister of Finance.

DATED at Richmond, B.C., this 4th day of January, 1979.

BRITISH COLUMBIA MARKETING BOARD

  
Geo. Okulitch - Chairman