

IN THE MATTER OF AN APPEAL PURSUANT TO THE NATURAL PRODUCTS MARKETING (BC) ACT, R.S.B.C. 1979, c.296, s.11

BETWEEN:

CEDARDALE POULTRY RANCH LTD.

APPELLANT

AND:

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

APPEARANCES:

On behalf of the Appellant: Peter Cook, Esq.
(President of Cedardale Poultry Ranch Ltd.)

On behalf of the Respondent: Bruce Fraser, Esq.,
Counsel

1. By letter dated June 28, 1984, Cedardale Poultry Ranch Ltd. appealed to the British Columbia Marketing Board (the "Board") from the decision of the British Columbia Egg Marketing Board (the "Egg Board") taken June 7, 1984, to deny its application for levy abatement.

2. The appeal was heard by the Board in Richmond on September 24, 1984, with both parties appearing to lead evidence and make submissions.

3. Mr. Peter Cook and Mr. D.P. Martin, Plant Manager of Lucerne Foods Ltd., testified on behalf of the Appellant, and Mr. A.E. Giesbrecht and Mr. Neall Carey, Chairman of the Board and General Manager of the Respondent respectively, testified

on behalf of the Egg Board.

4. A book of Exhibits containing relevant correspondence, minutes of the Egg Board meetings and its Standing Orders and Policy was submitted to the Board at the hearing and a copy of that Exhibit book is appended to these Reasons for ease of reference as Appendix A.

5. The relevant facts which emerge from the correspondence, documentary exhibits and oral testimony, both in direct and cross-examination at the hearing before the Board, are as follows:

- (a) Effective April 3, 1983, the Egg Board implemented a Uniform Levy System under which the total levy on a producer was calculated by multiplying the number of laying hens allowed to him under his quota times a levy calculated per laying hen. The levy per hen was adjusted so that the Egg Board could meet the levy payments to the Canadian Egg Marketing Agency (CEMA) and its own expenses in each fiscal year. This Uniform Levy System replaced the previous system whereby the producer paid a levy based on the number of eggs he marketed. Both parties were in agreement that the new system was an improvement over the old.
- (b) The levy rebated to CEMA is still calculated on the basis of the number of eggs marketed.

- (c) The Appellant is a producer of eggs with a quota granted by the Egg Board. Almost all of its production is marketed to a single buyer, Lucerne Foods Ltd.
- (d) Sometime in 1983, Lucerne Foods Ltd., through its plant manager, Mr. D.P. Martin, requested the Appellant to adjust its laying flocks from 2 age groups to 4 age groups in order to attempt to move its flock placements more in line with consumer demand. (See Mr. Martin's letter of May 17, 1984.)
- (e) In order to keep its major buyer satisfied, the Appellant proposed to adjust its laying flock placements from 2 age groups to 4 age groups by the process described in its letter of May 22, 1984, to the Egg Board.
- (f) At that time, the Appellant had already achieved 3 age groups by either shipping to the killing plant early and by delaying one flock to 14 months.
- (g) The final step in this adjustment in its laying flocks proposed by the Appellant, was to hold over the fourth age group of approximately 13,500 birds then at an age of 62 weeks for a further 5 months in order to complete the change over from 2 age groups to 4 age groups. The problem with this proposal was that, as Mr. Cook testified, the quality of the egg produced decreases past this age and the eggs become less marketable.

- (h) Therefore, the Appellant proposed to use a short moult which takes the birds out of production for 5 weeks and then to lay the birds for another 3 months approximately. The advantage of this proposal to the buyer, Lucerne Foods Ltd., was that they would receive larger eggs during the three months after the moult and that the flocks of the Appellant would then be split into 4 age groups which would reduce the size of the surge of small eggs which are produced when hens begin laying eggs. This, in turn, meant that Lucerne Foods Ltd. would likely return fewer small eggs as surplus to the shell egg requirements of the market, and, therefore, reducing the cost to the industry in disposing of the eggs into the less lucrative processing market.
- (i) By that letter of May 22, 1984, the Appellant requested from the Egg Board a levy abatement in respect of the laying hens for the period while they were undergoing this moult.
- (j) By letter dated May 25, 1984, the General Manager of the Egg Board replied that "with regard to moulting, the Board's existing policy resolution on levy abatement excludes from consideration claims resulting from events generally considered under management control, such as moulting." On the other hand he stated it is likely that levy abatement could be considered "should a producer be requested to moult a flock as part of the implementation of a placement scheduling plan which includes all producers shipping to a given grading station ...".

- (k) The General Manager then stated that the Egg Board expected to study Lucerne's situation within a few months and to make recommendations for placement scheduling changes within an overall recommended plan for Lucerne Foods Ltd.
- (l) The General Manager invited the Appellant to change its plans and await these overall recommendations.
- (m) Mr. Cook testified that this suggestion was not feasible since he was in the middle of the change over from 2 to 4 age groups in his flocks at the request of Lucerne Foods Ltd. and that considerable lead time, expense and planning was involved in complying with this request.
- (n) Lucerne Foods Ltd., by letter dated June 1, 1984, to the Egg Board, supported Mr. Cook's request for a levy abatement stating that "we have been actively pursuing the Board's and our objective, i.e.: reduced surplus and providing the more even distribution of sizes that the market requires."
- (o) In that letter, the General Manager of Lucerne Foods Ltd., Mr. D.P. Martin, stated that had they been advised at the outset of the overall plan being pursued by the Egg Board, Lucerne Foods Ltd. would not have gone ahead independently.
- (p) Mr. Cook attended a meeting of the Egg Board on June 7, 1984 (see Minutes of that date and letter of June 11, 1984, from the General Manager of the Egg Board to the Appellant) in order to support his application for levy abatement.

- (g) The General Manager of the Egg Board stated that "The Board's policy with respect to levy abatement for placement scheduling changes is that consideration can only be given when the Board itself requests a producer to make a scheduling change as part of an overall plan including all producers shipping to a given grading station."
- (n) By letter dated July 24, 1984, Lucerne Foods Ltd. advised the Egg Board of the cost of the Appellant's moult in support of its flock adjustment from 2 age groups to 4 age groups and calculated that the Egg Board received \$1,990 additional levy as a result of that moult.

6. Mr. Peter Cook explained the process of moulting laying hens as follows:

- (a) Moulting is a process of putting laying birds into a rest period of about 5 or 6 weeks during which virtually no eggs are produced.
- (b) The bird, during this time, refeathers completely and regenerates its ovaries and is relieved from the stress of production so that when the moult is completed, the birds come rapidly back into production and produce predominantly large eggs.
- (c) The moulting procedure is carried out in the tenth month of production and the birds thereafter produce well for 5 to 6 months.

(d) There is a cost attached to this procedure in that one needs to feed the moulting flock for a period of 5 to 6 weeks without any production of eggs.

7. Standing Order 6 of the Egg Board defines Levies and Fees and Sub-order (f) provides for abatement of levy in the following terms:

"The Board may, on application to it, provide for abatement of levy payable under 6(b) above where the Registered Producer establishes to the satisfaction of the Board that owing to special circumstances, the Registered Producer is, for a period, unable to keep or maintain the number of layers which he is eligible to keep or maintain."

8. That Standing Order is contained in B.C. Regulation 520/81.

9. The Egg Board, by Policy Resolution dated September 8, 1983, expanded upon the Regulation to articulate a "Proposed Policy of Considerations of Abatement of Uniform Levy" and relevant sections of that Policy are quoted below:

"2. General

Application for abatement will be heard and determined on a case-by-case basis. Applicants will be encouraged to attend in person at Board meetings to explain their cases. All relevant documentation should accompany applications in order to receive full Board consideration. The Board will hear all applications meeting the criteria for consideration, and may decide from time to time to appoint a committee of Registered Producers to advise it in its deliberations.

3. Exclusions from Consideration of Abatement Include

- (b) Claims resulting from events generally considered as under management control such as:
- (i) moulting
 - (ii) unexceptional disease
 - (iii) mortality
 - (iv) extended turnaround

4. Claims for Abatement May Include

- (a) Planned action such as:
- (i) renovations
 - (ii) flock cycle adjustment
 - (iii) reasons similar to above.

Producers who plan such action should apply in advance to the Board, providing all relevant information."

10. That Policy Resolution is headed "Confidential - Internal Use Only".

11. The issue on this appeal is whether the Appellant has established that, owing to special circumstances, the Appellant was for a period of 5 weeks unable to keep or maintain the number of laying hens for which it had quota.

12. Assuming, for the sake of argument, that the Policy Resolution dated September 8, 1983, of the Egg Board is consistent with s. 6(f) of B.C. Reg. 520/81, the issue may be restated as follows: does the Appellant's claim for levy abatement fall under the exclusion for moulting or is it in respect of a planned action such as a flock cycle adjustment? Put in other words, what was the predominant purpose of the Appellant in moulting its laying hens?

13. Mr. Peter Cook and Mr. D.P. Martin gave testimony to the effect that the predominant purpose of the Appellant was to carry out a flock cycle change or adjustment and the moult of its laying hens was simply a procedure used to accomplish that purpose. While questioned in cross-examination, that evidence was not seriously challenged.

14. In reply, the Egg Board says that any placement scheduling adjustment should be part of a plan which includes all producers shipping to a given grading station and that the Egg Board should be notified in advance of such adjustment in order that it can carry out a study and create a plan for an overall program coordinating supply to that grading station.

15. There is nothing in B.C. Reg. 520/81 that makes prior consultation a pre-condition for consideration for levy abatement. If that is meant to be a mandatory requirement of the policy in abatement of the Uniform Levy, it may not be supported by the Regulation.

16. The Board finds that the Appellant's claim for levy abatement clearly was a planned action in the nature of a flock cycle adjustment as referred to in category 4(a)(ii) of the Egg Board's current Policy Resolution.

17. The Board considers the Appellant's claim for levy abatement to be reasonable in all the circumstances.

18. It was clear from the testimony that the Egg Board has made a major commitment to improve the synchronization of the supply of British Columbia produced eggs with demand through its ongoing development of a computer program and the pilot programs undertaken. The Board considers the actions taken by Lucerne Foods Ltd. and Cedardale Poultry Ranch Ltd. to be fully consistent with the policy underlying that commitment.

19. The Board considers Lucerne Foods Ltd. to be fully capable and sufficiently well informed about its own supply and its

forecast demand to make a determination on flock cycle adjustments without being required by the Egg Board to request its permission first before carrying out such adjustments.

20. That having been said, the Board recognizes that overall coordination of supply and demand within the Province is obviously a legitimate and continuing concern for the Egg Board and that individual flock cycle adjustments, where possible, should be consistent with any overall program initiated and implemented by the Egg Board and, therefore, encourages prior discussion to enhance conformity with the Egg Board's program.

21. The Board varies the decision of the Egg Board communicated to the Appellant by letter dated June 11, 1984, and orders the Egg Board to grant the Appellant a levy abatement in the circumstances of this case.

22. By letter dated July 24, 1984, the Egg Board was advised of an estimate by Lucerne Foods Ltd. of the cost of the additional levies over the 5 week moult period, being \$1,990.

23. At the hearing, the Appellant requested that sum by way of levy abatement and presented further argument in support of that amount.


24. The Egg Board did not seriously question that calculation and no evidence was led to show that it was incorrect.

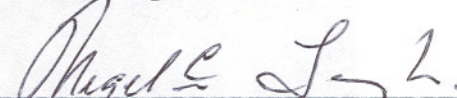
25. The Board finds that \$1,990 is the amount of the excess levy to the Appellant on the special circumstances in respect of this flock cycle adjustment

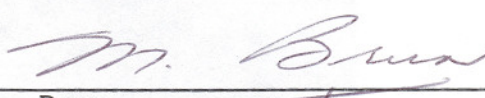
26. The Board considers it appropriate that it is a term and condition of this Order that the levy abatement requested by the Appellant be in the amount of \$1,990.


27. The Board considers it to be equitable in the circumstances that the Appellant's deposit of one hundred dollars (\$100) shall be returned in its entirety to the Appellant.

DATED the 7th day of November, 1984, in Richmond, British Columbia.


C.E. Emery, Chairman


N.C. Taylor, Vice-Chairman


M. Brun


M. Hunter