

90-15
10/19/90

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

AND

IN THE MATTER OF APPEALS TO THE
BRITISH COLUMBIA MARKETING BOARD
AGAINST A DECISION OF THE
BRITISH COLUMBIA EGG MARKETING BOARD
DATED APRIL 5, 1990

BETWEEN:

JAKE PENNER

APPELLANT

AND

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances:

Jake Penner

APPELLANT

P. Guenther, Member
M. Speitelsbach, Member
N. Carey, General Manager
P. Whitlock, Controller
Bruce F. Fraser, Legal Counsel

RESPONDENT


DATE OF HEARING

JULY 6, 1990

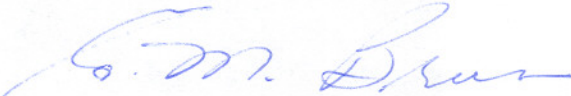
1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Jake Penner of Salmon Arm Poultry Farm against the decision of the British Columbia Egg Marketing Board ("Respondent") made April 5, 1990, not to allow Salmon Arm Poultry Farms to change grading stations.
2. The appeal was filed with the Board on May 4, 1990, and was heard in Richmond, British Columbia on July 6, 1990.
3. The Appellant was not represented by counsel and presented his own case. The Respondent was represented by Counsel. Opportunity was given to call and cross-examine witnesses, file documentary evidence, file written submissions and make oral submissions on the facts and the law.
4. The Appellant acknowledges that the Respondent has the authority to direct product but argued that:
 - (a) he has operated the egg production unit in Salmon Arm since 1976. As well, he has been a director of the Interior Egg Producer Association for several years and understands how the system works;
 - (b) the Respondent had treated the Appellant unfairly on two previous occasions, and on those two occasions the Respondent had acted in a heavy-handed manner and refused to consider they had made a mistake;
 - (c) there is a history of surplus in the Interior and the transfer of the Appellant's production to Fairview Farms would have relieved the surplus problem;
 - (d) by not being permitted to transfer to Fairview Farms, the Appellant was placed at an economic disadvantage, because he received a lower price compared to other producers in British Columbia; and
 - (e) as a producer board, it is not the responsibility of the Respondent to concern itself with the viability of an egg grading station.
5. The Respondent argued that:
 - (a) under Section 37(a) of the British Columbia Egg Marketing Scheme, the Respondent is granted the authority to designate the agency through which a registered producer shall market the regulated product;
 - (b) by Resolution dated June 2, 1983, the Respondent ordered that changes to the grading station to which a producer shipped product would be considered only on application to the Egg Board;
 - (c) the Appellant had applied to the Respondent on two separate occasions. The first, a change from Floritto's to Glenmore Eggs was approved, the second, the matter under appeal was denied;

- (d) the Respondent received applications from both Cedarcroft Holdings Ltd. and the Appellant to change from Glenmore Eggs Ltd. to another registered grading station. The Respondent considered information provided by the producers, Glenmore Eggs and information gathered by staff and decided the transfers would not be allowed;
 - (e) subsequently, the Respondent reviewed updated data which satisfied the Respondent that there was sufficient surplus at Glenmore Eggs to warrant the transfer of one producer, without endangering the viability of the egg grading station;
 - (f) the application from Cedarcroft Holdings had been received first in time, and therefore their application for transfer was approved;
 - (g) by the Notice of Appeal the Respondent was made aware of concerns of the Appellant regarding his grade-out from Glenmore Eggs. The Respondent investigated this concern and determined that the Appellant had been treated equally well on average with all producers in British Columbia.
6. Having carefully considered the arguments and the evidence presented, the Board finds no evidence to indicate that the Respondent has improperly exercised its statutory authority to regulate the time and place at which, and designate the agency through which, the regulated product shall be produced, packed, stored or marketed, and the decision of the Respondent is confirmed.
7. In keeping with this Board's Rules of Appeal, the Appellant's deposit shall be forfeit.

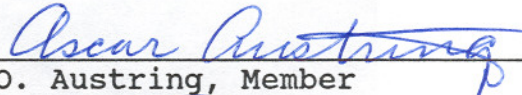
Dated this 19th day of October, 1990 in Victoria, British Columbia



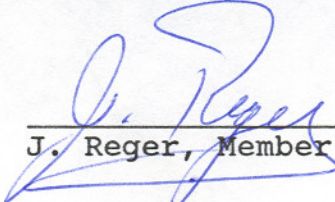
D. M. Iverson, Chairperson



E. M. Brun, Vice-Chairperson



O. Austring, Member



J. Reger, Member