

BRITISH COLUMBIA MARKETING BOARD

BETWEEN:

MR. & MRS. ART KLEINE

APPELLANT

AND:

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

MEMBERS OF BOARD:

- Mr. C. Emery, Chairman
- Mrs. M. Brun
- Mr. R. Reynolds
- Mr. H. Black
- Mr. N. Taylor

Mr. and Mrs. Art Kleine appearing on their own behalf.

Mr. Bruce Fraser appearing on behalf of the Respondent.

Vancouver, B.C.

May 31 , 1982

On January 21, 1982, the British Columbia Egg Marketing Board found that Mr. & Mrs. Art Kleine ("the Kleines") were "keeping or maintaining layers in a number greater than 500 for the purpose of egg production and . . . failed to obtain a licence from the Board permitting (them) to do so". The British Columbia Egg Marketing Board notified the Kleines that they were in contravention of the Standing Order of the Board and further ordered that all layers kept by them in excess of 500 were to be seized and disposed of forthwith. The Kleines were advised that they could apply to the Board to show cause why any layer so seized should not be sold or disposed of by the Board.

In a letter dated February 5, 1982 the Kleines applied to the British Columbian Egg Marketing Board for a show cause hearing and at that time stated:

. "We realize we are in contravention and would not like to continue this situation indefinitely, therefore we will never put anymore chicks into the barns for the purpose of egg production."

At the show cause hearing held on February 11, 1982, after hearing from the Kleines the British Columbia Egg Marketing Board rejected the appeal of the Kleines and affirmed the Order of January 21, 1982. The Kleines now appealed this Order of the British Columbia Egg Marketing Board to this Board by virtue of section 11 (1) of the Natural Products Marketing (BC) Act, R.S.B.C. 1979, c. 296.

The Kleines are alleged to have violated the Standing Orders of the British Columbia Egg Marketing Board, B.C. Reg. 520/81, section 2 (a) which reads in part as follows:

No person shall grow or produce for marketing, pack, store, transport or market the regulated product within British Columbia unless he is qualified to and applies to and does obtain from the Board annually, one or more appropriate licences of the types hereinafter described:

- (1) Registered Producer Licence.
- (2) Producer-Vendor Licence.
- (3) Commercial Hatching Egg Producer Licence.
- (4) Registered Grading Station Operator Licence.
- (5) Chick Hatchery Operator Licence.

...

There is no doubt that the Kleines were in violation of this Standing Order. Indeed they admitted that they realized they were in contravention but because of financial difficulties they felt compelled to breach this Order. By virtue of section 16 of the Standing Orders the British Columbia Egg Marketing Board was justified in seizing any regulated product kept in violation of the Orders of the Board.

While this Board has sympathy for the Kleines nevertheless in our view this appeal must fail. The Kleines are clearly in breach of a scheme designed to ensure the orderly promotion, control and regulation of eggs within the province and to allow individuals to exempt themselves from the scheme for personal or financial reasons would undermine its operation.

During the course of the appeal the Kleines contended that levies deducted by the British Columbia Egg Marketing Board during the period in question should be returned. They contended that if they were not lawfully acting within the confines of the scheme then no levies could lawfully be demanded from them. Section 6 of the Standing Order reads in part as follows:

"(a) Levy - "A levy is hereby imposed on every Registered Producer of an amount per dozen from time to time fixed by the Board on the number of dozens of eggs marketed by him including any eggs marketed by him in interprovincial and export trade.

Admittedly the Kleines are not Registered Producers and therefore a levy could not be demanded from them pursuant to section 6. However, it can not be said in this situation that the Kleines were paying a levy pursuant to section 6. The Kleines knew full well that they were not Registered Producers and they were not bound to pay the levy. The Kleines cannot claim to be mistaken either as to the law or the facts. In our view the levy that they paid was not paid pursuant to section 6. Rather the Kleines paid this money of their own free will in order to induce the wholesaler to purchase the eggs from them. If they did not pay the levy pursuant to the Standing Orders, they cannot now rely on those Standing Orders to justify a repayment of the money to them. In our view the Kleines are now estopped from demanding a return of the monies paid.

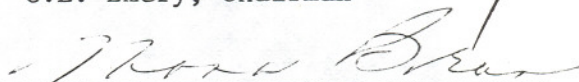
The Kleines have also requested a return of levies paid by them with respect to the sale of eggs which occurred prior to December 31, 1981. This was the date on which the Standing Orders in question were filed as required by the Regulations Act, R.S.B.C. 1979, c. 361 s. 2. Prior to that time the Standing Orders had no effect. We so held in the decision of Kleine v. British Columbia Egg Marketing Board dated January 14, 1982, and ordered the British Columbia Egg Marketing Board to return to the Kleines the proceeds from the disposition of the eggs seized together with any interest which had accrued to that date. In our view any claim for a return of levies paid for that period should have been made at the time of that first appeal. It is not properly made at this time and we express no comment as to the merits of their claim.

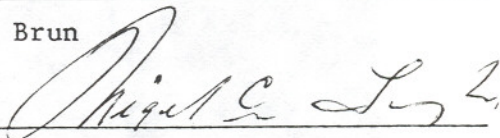
For the above reasons this appeal is dismissed and the Order of the British Columbia Egg Marketing Board affirmed.

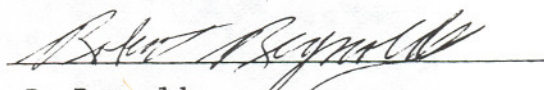
It is hereby ordered that the deposit lodged by the Appellant shall be forfeited in its entirety to the Minister of Finance.

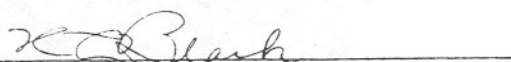
DATED at Vancouver, B.C. this 31st day of May, 1982.


C.E. Emery, Chairman


M. Brun


N. Taylor


R. Reynolds


H. Black