

12/0/88

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

AND

IN THE MATTER OF AN APPEAL TO THE
BRITISH COLUMBIA MARKETING BOARD
FROM THE DECISION OF THE
BRITISH COLUMBIA EGG MARKETING BOARD
MADE JULY 7, 1988
CONCERNING DON NEUFELDT

BETWEEN:

DON NEUFELDT

APPELLANT

AND:

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances: D. Neufeldt

APPELLANT

B. Fraser, Legal Counsel
F. Krahn, Director, B.C. Egg Marketing Board
N. Carey, General Manager, B.C. Egg Marketing Board
P. Whitlock, Controller, B.C. Egg Marketing Board

RESPONDENT

DATE OF HEARING

OCTOBER 6, 1988

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Mr. Don Neufeldt ("the Appellant") from a decision of the British Columbia Egg Marketing Board ("the Respondent") made on July 7, 1988 which states as follows:
 - a) that the Appellant reduce his laying flock to a maximum of 99 layers by December 31, 1988, and
 - b) that the Appellant pay to the Respondent Marketing Licence fees in the amount of \$5,858.00 with respect to the Appellant's egg production from January 1, 1986 to May 15, 1988.
2. The appeal was filed with the Board on August 5, 1988 and was heard in Richmond, British Columbia on October 6, 1988.
3. The Appellant appeared on his own behalf while the Respondent was represented by legal counsel, and both parties were given the opportunity to call and cross-examine witnesses, present documentary evidence, file written submissions and make oral submissions on the facts and the law.
4. The Respondent provided evidence that on August 5, 1983 the Directors of the Respondent gave first reading to a resolution (hereinafter referred to as "the Resolution") which reduced the maximum number of layers which may be kept or maintained after September 1, 1983 to less than 100, without the requirement of obtaining a license as a registered producer under the Standing Order of the Respondent. Exempt from this requirement are those persons who can establish to the satisfaction of the Respondent, if required, that they kept or maintained between 100 and 499 layers throughout the six month period immediately prior to August 31, 1983. The Respondent provided evidence that on September 8, 1983 the Directors of the Respondent gave second reading to the Resolution, and on the same date gave notice to the egg industry of the policy change by way of a Newsbulletin.
5. The Appellant provided evidence as follows:
 - he was considering a purchase of the farm in question in early August of 1983;
 - on August 4, 1983 he telephoned the Respondent and was advised by the Respondent's secretary that he could place and maintain on the subject farm an under 500 layer flock without a permit from the Respondent;
 - on August 5, 1983 the above advice was repeated over the telephone by the Respondent's secretary to the Appellant's mother;
 - based on this advice from the Respondent's secretary the Appellant completed an agreement to purchase the farm by way of an oral agreement for sale sometime in early August, 1983, borrowing money from his parents;

- because of the religious convictions of the vendor of the farm, Allan Toews, no Interim Agreement or other form of written contract was used in the transaction, which was completed sometime in August, 1983 on the basis of a verbal agreement, a handshake and a deposit of \$1,000.00;

- in early December of 1983 the Appellant wished to repay the monies borrowed from his parents and obtained a mortgage on the farm, at which time an Interim Agreement was executed to indicate the purchase price of the farm;

- the Appellant took possession of the farm on December 3, 1983.

6. The Appellant argued that he should be allowed to maintain an under 500 layer flock on the basis of his agreement to purchase the farm prior to September 1, 1983, pursuant to the exemption to the Resolution. The Appellant submitted that other producers had been granted such exemptions under the circumstances of their particular cases. With respect to the Marketing License fees, the Appellant argued that these are not properly payable by him to the Respondent as they are not assessed against or collected from the other unlicensed egg producers in the province with any consistency by the Respondent. In any event, the amount of \$5,858 claimed by the Respondent should be reduced on the grounds that the information used by the Respondent to calculate the fees was based on assumptions which could not be substantiated. The Appellant indicated that he was willing to negotiate the amount of the fees with the Respondent.

7. The Respondent provided further evidence as follows:

- the Respondent's decision to reduce the maximum unlicensed flock size from 499 to 99 as of September 1, 1983 was made in conjunction with a declining national demand for eggs and a resulting cut-back of 5% on licensed producer quotas;

- the Respondent could not give advance notice of this decision because to have done so would have encouraged unlicensed producers and others to place 499 layer flocks prior to the implementation date of September 1, 1983, thereby increasing egg production;

- the Respondent's decision as communicated by way of a Newsbulletin dated September 8, 1983 was very well known throughout the Fraser Valley egg industry and must have been known by the Appellant;

- since 1983, at various times the Appellant's layer flock exceeded even the 499 layer maximum, ranging as high as 1760 layers;

- despite earlier inspections of the Appellant's farm the Respondent only recently became aware of the Appellant's layer flock, as it had previously concluded that all chickens on the Appellant's farm were part of the Appellant's licensed broiler chicken operation;

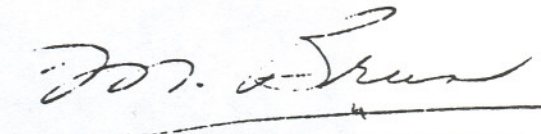
- by giving notice to the Appellant on July 7, 1988 to reduce his layer flock by December 31, 1988 the Respondent gave the Appellant an opportunity to scale down over time without undue financial hardship.

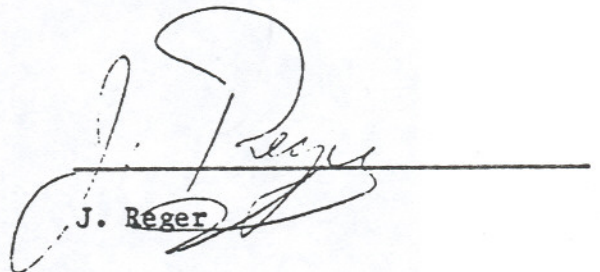
8. The Respondent argued that its decision to require the Appellant to reduce his laying flock to a maximum of 99 layers by December 31, 1988 should be upheld on the grounds that the Appellant did not complete his agreement to purchase his farm until December, 1983 and therefore he does not fall within the ambit of the exemption to the Resolution. Furthermore, the Marketing License fees were properly assessed against the Appellant as he was making a business of egg production. The amount of \$5,858 (which could have been calculated in excess of \$70,000) was in fact calculated giving every benefit of doubt to the Appellant.
9. At the hearing of this appeal the Board requested that the Appellant provide documentary evidence of his purchase of the farm prior to September 1, 1983. The Appellant was unable to do so at the hearing. The Board delayed its decision of this appeal to provide the Appellant with an opportunity to provide such documentary evidence by 5:00 p.m. on November 8, 1988 but the Appellant was unable to do so. Similarly, the Board requested that the Respondent provide evidence that its Directors gave second reading to the Resolution. On October 12, 1988 the Respondent provided the Board with an excerpt from the minutes of a Director's meeting held September 8, 1983 indicating second reading of the Resolution.
10. The Board finds as follows:
 - a) the Appellant was not able to provide sufficient evidence to convince the Board that he completed or even initiated the purchase of his farm prior to September 1, 1983;
 - b) while the Appellant argued that he is entitled to a 499 layer flock, the evidence indicated that at various times the Appellant exceeded the legal limit of 499 layers, although the exact figures are unclear;;
 - c) based upon the evidence submitted, the Board accepts the Respondent's figure of \$5,858.00 as being the amount of the Marketing License fees owed to the Respondent by the Appellant;
 - d) under the circumstances the Respondent did its best to be fair to the Appellant by giving him six months notice to reduce his laying flock, and by giving him the benefit of the doubt in the calculation of the Marketing License fees;

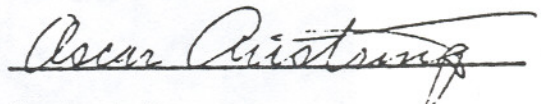
- e) while the Board has sympathy for the situation of the Appellant, it must emphasize to him the importance of keeping proper records with respect to his egg production.
11. Having considered all of the evidence and submissions at the hearing of this appeal, the Board therefore finds in favour of the Respondent and hereby orders that the Appellant reduce his laying flock to a maximum of 99 layers by December 31, 1988; and that the Appellant pay to the Respondent Marketing License fees in the amount of \$5,858.00 with respect to the Appellant's egg production from January 1, 1986 to May 15, 1988.
12. In accordance with Board's Rules of Appeal, the whole of the Appellant's deposit shall be forfeit.

Dated this 6 day of December, 1988 in Victoria, British Columbia.


C.E. Emery, Chairman


M. Brun, Vice-Chairman


J. Réger


O. Austring