

12/24/96

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

AND

**IN THE MATTER OF AN APPEAL CONCERNING
AN OVER-QUOTA ASSESSMENT**

BETWEEN:

VEEKEN'S POULTRY FARM LTD.

APPELLANT

AND:

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

DECISION

APPEARANCES:

**For the
British Columbia Marketing Board
Panel Members**

**Mr. Doug Kitson, Chair
Ms Christine Dendy, Vice Chair
Ms Christine Moffat, Member
Ms Karen Webster, Member
Mr. Jim Collins, Panel Secretary**

For the Appellant

Mr. Peter Veeken

For the Respondent

**Mr. Gerry Zaph, Chair
Mr. Peter Whitlock, Controller**

**Date and Place of
Hearing:**

**October 3, 1996
Richmond, British Columbia**

INTRODUCTION

1. The matter before the British Columbia Marketing Board (BCMB) is an appeal by Veeken's Poultry Farm Ltd. (Mr. Veeken) from a decision of the British Columbia Egg Marketing Board (Egg Board), as communicated in a letter dated May 2, 1996, concerning an over-quota assessment.

ISSUE

2. The issue is the accuracy of the count taken in Mr. Veeken's No. 2 Barn on May 30, 1995.

BACKGROUND

3. On May 30, 1995, Jan Legere, the Egg Board's Field Representative and official counter, accompanied by Liam Keane, representing the Canadian Egg Marketing Agency (CEMA), conducted a count of No.2 barn at Mr. Veeken's farm.
4. The count method employed by both the Egg Board and CEMA is identical. In No. 2 barn, the counters sampled the seven-bird cages, arriving at the figure of 21,901 birds. This count procedure, which normally includes an offer to recount if a count is in dispute, is standard practice for this cage configuration.
5. The following day Mr. Veeken instructed three of his own staff to recount No. 2 barn. They arrived at a count of 21,820, which was 81 birds fewer than the Egg Board/CEMA count.
6. Both counts, by the Egg Board on May 30, 1995, and Mr. Veeken's staff on May 31, 1995, indicated an amount over-quota, being 888 birds in the former and 807 birds in the latter.
7. At the completion of his staff's count, Mr. Veeken called the Egg Board to request that quota credits be used to reduce the over-quota assessment.
8. Egg Board policy is that quota credits are established when a flock is placed, not when a producer is determined to be over-quota.

9. On June 27, 1995, Mr. Veeken was invoiced an over-quota assessment levy of \$2,343.84. On June 27, 1995, Mr. Veeken issued a cheque in the amount of \$630.28 to the Egg Board. In a letter to the Egg Board, dated July 18, 1995, Mr. Veeken stated that he was being overcharged, for being over-quota, for a number of reasons. Because of these reasons, he was only willing to pay the over-quota levy from April 6 to May 4, 1995, based on his calculations using a declining balance to reflect mortality.
10. Mr. Veeken stated that in August, 1995, he removed two-thirds of the birds from No. 2 barn and disposed of the spent fowl to a variety of purchasers. It was at this point that he came to the conclusion that the counts by the Egg Board/CEMA representatives and his own staff were both incorrect.
11. As a result of his own calculations, Mr. Veeken appealed the over-quota assessment to the Egg Board on March 7, 1996.
12. After holding a hearing of Mr. Veeken's appeal, the Egg Board confirmed its original position with respect to the May 30, 1995, count. The Egg Board communicated this decision to Mr. Veeken in a May 2, 1996, letter.
13. On May 24, 1996, Mr. Veeken appealed the decision of the Egg Board to the BCMB.
14. At the completion of the October 3, 1996, hearing by the BCMB, further documentation was requested and submitted as follows:
 - a. By Mr. Veeken on October 7, 1996: -
Mortality Sheets and various purchase and sales records.
 - b. By the Egg Board on October 17, 1996: -
Affidavit signed by Jan Legere, Egg Board Field Representative, dated October 17, 1996.
 - c. By Mr. Veeken on October 30, 1996: -
Response to the Egg Board's Affidavit.
 - d. By the Egg Board on October 31, 1996:-
Response to the Mr. Veeken's mortality sheets and various purchase and sales records.

ARGUMENT

Mr. Veeken

15. Mr. Veeken claimed that, as a result of his August 1995, calculations, the counts performed on May 30 and May 31, 1995, were incorrect. In his August 1995, calculations, Mr. Veeken determined the number of birds in No. 2 Barn at that time, added the shipments of spent fowl to various buyers, both in numbers of birds and by weight, and then worked backwards to the May counts, adding in mortality numbers.
16. According to Mr. Veeken there was no offer made by the Egg Board/CEMA representatives to recount No. 2 barn.
17. Rather, according to Mr. Veeken, he requested a recount of No. 2 barn, and the response was that the recount total would be higher than the original. Mr. Veeken stated that the CEMA representative was very negative and aggressive and he took the response as a threat.
18. Mr. Veeken stated that the accuracy of a count may be affected by the presence of brown birds, which generally have a one bird per cage lower density. No. 2 barn did contain some brown birds.

Egg Board

19. The Egg Board stated that the sampling method of counting is a standard procedure used by the Egg Board to verify producer adherence to quota. It is used also by CEMA to ensure that the provincial egg boards are within their provincial quotas. The count is done within approximately four weeks of placing the birds.
20. According to the Egg Board, the process used by Mr. Veeken to determine the number of birds - working backwards from the spent fowl removal date and adding in mortality numbers, is not relevant. The field count, done at a time close to placement of the birds, is used to determine that birds placed do not exceed quota.

21. The Egg Board noted that where recounts are required, it is normal practice to conduct such counts in a very careful fashion. This generally results in a higher count and that producers are so advised.
22. The Egg Board's policy allows the producer to attend the count and to ask for a recount at the time of a disputed count. According to the affidavit, sworn October 17, 1996, of the Egg Board counter, Ms Legere, an offer to recount No. 2 barn was made.
23. The Egg Board reported that it is normal practice to allow a small overage sleeve on all counts.
24. With reference to brown birds, the Egg Board stated that the counting method is applied uniformly throughout a barn, even when both white and brown birds are present in a barn.

FINDINGS BY THE BCMB

25. The information contained in the additional documentation provided by the parties, and referred to in this decision at paragraph number 14, has been considered by the BCMB in arriving at its decision.
26. The sampling counting method employed by the Egg Board/CEMA was in accordance with the normal practice of these two organizations.
27. The flock disposal method of count Mr. Veeken used is not a normal or accepted practice and would be very difficult to verify.
28. It is improbable that the presence of brown birds would cause significant error in the sampling count. Even if the sampling method missed all the brown bird cages, this would not account for the significant difference in both counts.

29. We find that the facts show Mr. Veeken declined his right to a recount and that his own staff's count, on May 31, 1995, substantially confirmed the Egg Board's May 30, 1995, count. We can not explain why the number of Mr. Veeken's spent fowl in August 1995, was not consistent with the May counts. However, this does not alter our view on the legitimacy of the original count.
30. Both parties stated at the hearing that they would not be seeking costs.

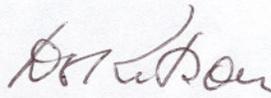
DECISION

31. The appeal is denied.
32. Costs will not be awarded.

RECOMMENDATION

33. It is the recommendation of the BCMB that the Egg Board remind their producers of their right of recount and the desirability of the producer's presence at the time of count. The Egg Board should also caution their counters as to how to deal with the offer to recount. It should ensure that any statement that a slower recount is usually higher, is not interpreted as a threat.

Dated at Victoria, British Columbia, this 24th day of December, 1996.



Doug Kitson, Chair
for the
British Columbia Marketing Board