

87-16
5/9/88

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

AND

IN THE MATTER OF AN APPEAL TO THE
BRITISH COLUMBIA MARKETING BOARD
FROM AN ORDER OF THE
BRITISH COLUMBIA CHICKEN MARKETING BOARD
DATED NOVEMBER 5, 1987

BETWEEN:

VANCOUVER ISLAND CHICKEN GROWERS' ASSOCIATION

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances: M. Hargreaves, Legal Counsel

APPELLANT

- J. Hunter, Legal Counsel
- P. Shoore, Sunrise Poultry Processors Ltd.
- D. Pollon, United Poultry Ltd./Hallmark Poultry Processors Ltd.
- R. Koehler, Lilydale Poultry Cooperative
- D. Sendall, Chairman, B.C. Chicken Marketing Board
- A. Stafford, Manager, B.C. Chicken Marketing Board

RESPONDENT

DATE OF HEARING

MARCH 16, 1988

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by the Vancouver Island Chicken Growers' Association ("the Appellant") from an Order of the British Columbia Chicken Marketing Board ("the Respondent"), identified as Interim Order #196 dated November 5, 1987, a pricing order which cancels the previous pricing order which provided a premium for the regulated product produced and marketed on Vancouver Island, and effectively establishes a "one price system" for the regulated product to be paid to all producers in the Province regardless of the region of production.
2. The appeal was filed with the Board on December 4, 1987 and was heard in Victoria, British Columbia on March 16, 1988.
3. Both the Appellant and the Respondent were represented by legal counsel and 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. It was agreed by the Appellant and the Respondent that prior to 1980, Vancouver Island producers received the same regulated price for their product as did Lower Mainland producers. In 1980 the Respondent provided for an additional \$.01 per pound live weight premium to be paid to Vancouver Island producers, in recognition of the higher costs for Vancouver Island chicken production. This premium remained in effect until cancelled by Interim Order #196, effective November 16, 1987.
5. The Appellant presented three grounds for appeal:
 - i) Lack of notice and consultation - It is submitted that the Respondent passed Interim Order #196 at the request of one or more processors, without notice to or consultation with the Appellant, whose members' livelihoods are greatly affected by such an Order;
 - ii) Application of erroneous principles - The Appellant was advised by the Respondent's Chairman, Mr. Dick Sendall, that Interim Order #196 was passed to accommodate a perceived need for a one price system for the entire province, whereas the relevant legislation clearly calls for a consideration of regional factors in the fixing of prices for regional producers;
 - iii) Failure to consider or apply appropriate principles - The higher costs for chicken production on Vancouver Island (largely for feed and energy) which led to the imposition of the \$.01 per pound premium in 1980 continue to prevail, and nothing has since changed which justifies the removal of the premium.

6. The Appellant seeks the following relief:
 - i) That Interim Order #196 be quashed, with the result that the \$.01 per pound premium be reinstated retroactive to November 16, 1987;
 - ii) That the Board clearly set out those factors which ought to be considered by the Respondent should this issue come before it again.
7. The Respondent admitted that the decision to pass Interim Order #196 was initiated by the Processors' Association, and that there is no dispute about the higher costs of chicken production on Vancouver Island. The Respondent submitted that the real question before the Board is a policy question as to what pricing system should be in place in the province - a one price system, or a regional system which takes into account different regional production costs.
8. The Natural Products Marketing (BC) Act, Section 13(1), provides in part that the Lieutenant Governor in Council may vest in a marketing board or commission the power ..." (g) to fix the prices, maximum prices, minimum prices or both maximum and minimum prices at which the regulated product or a grade or class of it may be bought or sold in the Province or that shall be paid for the regulated product by a designated agency; and to fix different prices for different parts of the Province;" (emphasis added).

In the British Columbia Chicken Marketing Scheme, 1961 (B.C. Reg. 188/61), Section 4.01, the Lieutenant in Governor in Council has vested in the Respondent the power ..." (g) to fix the price or prices, maximum price or prices, minimum price or prices, or both maximum and minimum prices at which the regulated product, or any grade or class thereof, may be bought or sold in the Province, or that shall be paid for the regulated product by a designated agency, and may fix different prices for different parts of the Province;" (emphasis added).

9. The evidence is that the costs of chicken production have always been higher on Vancouver Island than on the Lower Mainland. This economic disparity was recognized by the Respondent in 1980 when it instituted the \$.01 per pound premium to be paid to Vancouver Island producers. The difference in production costs existed in November of 1987 when the Respondent passed Interim Order #196, effectively removing the \$.01 per pound premium, and continues at the date of this Hearing. Nevertheless, at the request of the Processors' Association for a one price system for the entire Province, and without notice to or consultation with the Appellant, the Respondent acted to remove the \$.01 per pound premium. The economic impact on the Appellant is estimated to be \$250,000 to \$300,000 per year in reduced revenues, an average loss to each of the Appellant's 22 members of \$11,400 to \$13,400 per year.

10. The Respondent submitted that a one price system is appropriate for the Province, essentially because the processors regard B.C. as one market and now compete in this one market, and also because all other provinces have a one price system. The Board accepts the evidence of the Appellant that the other provinces do not have a region such as Vancouver Island, which is a unique geographical location.
11. The legislation described in Paragraph 8 above authorizes, but does not require, the Respondent to fix different prices for different parts of the Province. The evidence was that for certain purposes the Respondent considers different regions of the Province individually: for example, the institution of the \$.01 per pound premium for Vancouver Island production in 1980; the prohibition on the transfer of quota from Vancouver Island to the Lower Mainland; and the incentive offered to Lower Mainland producers to relocate in the North Okanagan in 1983 and 1984. The Board accepts the submission of the Appellant that it is both unfair and illogical to divide the Province into regions for certain purposes, and at the same time fail to recognize the different economic realities existing in those different regions.
12. The Board finds as follows:
 - a) The Respondent passed Interim Order #196 at the request of the processors, without any consideration of regional economic disparities or the effect of the Order on the Appellant;
 - b) By acting upon the unilateral request of the processors, the Respondent effectively abrogated its responsibility in the price setting process;
 - c) The evidence of the Respondent was insufficient to justify the imposition of a one price system for the Province.
13. Having considered all of the evidence and submissions at the hearing of this appeal, the Board therefore finds in favour of the Appellant and hereby quashes Interim Order #196, and orders that the \$.01 per pound live weight premium to be paid to Vancouver Island producers be reinstated retroactive to November 16, 1987.

Should such an issue come before the Respondent again, the following factors should be taken into consideration:

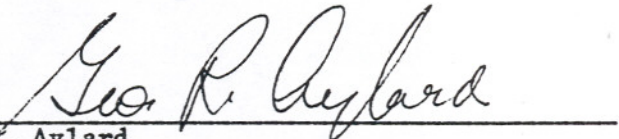
- a) Vancouver Island producers are a part of the provincial chicken industry, and they should be contacted and consulted prior to the implementation of policies which affect them and their businesses;
- b) Regional economic disparities should be taken into account in the development of pricing and financial policies;
- c) Orders and decisions may have different effects in different regions of the Province.

14. In accordance with the Board's Rules of Appeal, the whole of the Appellant's deposit shall be returned.

Dated this 9. day of May, 1988 in Victoria, British Columbia.


C. E. Emery, Chairman


M. Brun, Vice-Chairman


G. Aylard


J. Reger