

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

AND

IN THE MATTER OF AN APPEAL OF THE BRITISH COLUMBIA MILK
MARKETING BOARD DECISIONS CONCERNING THE QUOTA TRANSFER
ASSESSMENT POLICY
AND AMENDMENTS TO MILK MARKETING BOARD ORDERS

BETWEEN:

MR. BILL HOUWELING

APPELLANT

AND:

BRITISH COLUMBIA MILK MARKETING BOARD

RESPONDENT

DECISION

British Columbia Marketing Board

Panel Members

Ms. Christine Dendy, Chair
Ms. Karen Webster, Member
Mr. Don Knoerr, Member

Ms. Maggie Barrett
Appeal Secretary

Date of Deliberation:

August 4, 1995

The matter before the British Columbia Marketing Board (BCMB) is an appeal by Mr. Bill Houweling (Appellant) of a decision by the British Columbia Milk Marketing Board (Milk Board), concerning the fluid milk quota transfer assessment policy (FMQTA), communicated in a letter dated May 5, 1995.

Background

1. For many years, the Milk Board operated a Graduated Entry Program under which producers selling quota are required, by a quota transfer assessment policy (QTA), to return 10% of their quota to the Milk Board. The QTA is accumulated in a quota bank and allocated under a matching program to help new producers enter the industry and build their herds to an economic unit.
2. To discourage speculation in quota by short term producers, producers who had held licenses for less than five years were assessed a higher FMQTA rate, based on a sliding scale starting at 20%, declining to 10% after five years.
3. Mr. Houweling purchased quota and became a licensed producer in 1992. Since that time he has purchased more quota and received further quota by allotments from the Milk Board. They have now decided, due to changing circumstances in the industry and their personal financial situation, to sell their quota and farm, and relocate to farm in Alberta.
4. On March 29, 1995 the Milk Board amended their orders. They determined that the FMQTA could be reduced from 10% to 5% (4.55% for producers selling their entire quota) due to increased activity in quota transfers resulting from industry adjustment to new trade regulations. The Milk Board reasoned that the QTA would still provide sufficient quota to maintain the quota bank for the Graduated Entry Program. However they determined that the reduction for FMQTA would only apply to licensed producers who had been in the industry for more than five years. The manufactured milk QTA was also reduced from 10% to 5%, and had never differentiated between classes of producers.
5. The FMQTA policy does not provide for consideration of special circumstances for the licensed producers transferring quota, other than an exemption for transfer of quota to a family member who meets the definition of "exempt person".

6. In a letter dated April 4, 1995, the Appellant asked the Milk Board to consider removal of the 16% FMQTA which they would be required to pay in accordance with Schedule of Surrender of Provincial and Federal Fluid Milk Quota (Schedule 5 of the Consolidated Orders), applicable for the period of his licensed production at that time.
7. The Milk Board reviewed and denied his request, as communicated to him in a letter of May 5, 1995.
8. Mr. Houweling filed an appeal of this decision with the BCMB on May 31, 1995, citing that the decision was unfair, that he would lose money by the decision, that he had not entered the industry under the Graduated Entry Program and was not speculating in quota. He requested that his FMQTA be cut in half, as it had been for producers in production for over 60 months.
9. At issue is whether or not, by excluding a certain class of producers from the benefit of a reduced FMQTA, the Milk Board gave due consideration to the situation in deciding that continued differentiation between certain classes of producers was warranted.

Findings

10. The BCMB finds, from evidence presented during the hearing that, at the time of purchasing his quota, the Appellant was fully aware and accepted the quota transfer assessment policy and graduated scale applicable to licensed producers in the industry for less than 60 consecutive months, as indicated in Schedule 5 of the Orders. Both the Appellant and his wife were raised on dairy farms and are familiar with the conditions in the B.C. dairy industry.
11. The Appellant was aware of the amendments to the quota transfer assessment policy made on March 29, 1995.
12. The BCMB finds, from the report of a pre-hearing conference and from testimony of the Appellant, that the Appellant agreed with the policy of the Graduated Entrant Program, and did not disagree with the other amendments made to the Milk Board Orders on March 29, 1995. Further, he understood and did not challenge the principle of the quota assessment policy to maintain a quota bank for the Graduated Entry Program nor the reasons for differentiation in treatment of producers who had been in the industry for less than 60 months.

13. The Milk Board provided evidence which indicated that, although the Appellant claimed he would incur financial losses, he would actually realize a capital gain due to additional eligible quota granted by the Milk Board and the increase in value of quota during the period he was in production. The BCMB finds that the question of a gain or loss is not relevant to the Appeal, as quota price is a function of market conditions and not the amendment, which did not alter the Appellant's position.
14. The BCMB finds from testimony of the Milk Board, that in making the amendments to the Orders on March 29, 1995, the Milk Board gave due consideration to also reducing the FMQTA for producers licensed for less than 60 months. The Milk Board decided to not reduce that assessment because of their wish to maintain a strong deterrent to speculation. Supporting evidence indicated that, despite the uncertain conditions in the industry arising from changes in trade policy and supply management, quota values have continued to increase in recent years, along with market demand for quota.
15. The BCMB finds that the Milk Board followed its policy pertaining to quota transfer assessments.
16. The BCMB finds that no evidence was presented which would justify a change in the Milk Board Orders in order to satisfy the request of the Appellant.

Decision

17. The BCMB has considered the evidence and testimony presented by both parties during the hearing. The appeal is denied.

Dated at Victoria, British Columbia, this 11th day of August, 1995.

Christine M. Dendy

Christine Dendy, Appeal Chair