

IN THE MATTER OF THE NATURAL PRODUCTS
MARKETING (B.C.) ACT

AND

IN THE MATTER OF AN APPEAL TO THE
BRITISH COLUMBIA MARKETING BOARD
FROM A DETERMINATION OF THE
BRITISH COLUMBIA MILK MARKETING BOARD
DATED MAY 28, 1991

91-06
11/01/91
BRITISH COLUMBIA
MARKETING BOARD

OCT 30 1991

RECEIVED

BETWEEN:

WAYNE ZIMMERMAN

APPELLANT

AND:

BRITISH COLUMBIA MILK MARKETING BOARD

RESPONDENT

DECISION

The Appellant and his family operate a dairy farm in the McBride area. In June of 1990, mudslides occurred which affected the Appellant's production of milk. The Appellant asks that the British Columbia Marketing Board (the "Board") reinstate his "MSQ" which is his share of the industrial milk market of Canada lost as a result of not producing sufficient industrial milk during the dairy year 1989 - 1990.

The dairy year runs from August 1 of each year to July 31 of the following year. In each dairy year, producers maintain their MSQ if they produced a certain percentage of their allotted MSQ in the immediately preceding dairy year.

In order to maintain the full amount of MSQ for the 1990-91 dairy year Milk Market sharing Order 28 required producers to produce at least 85% of their MSQ during the 1989-90 dairy year. The Appellant produced less than 85% of his MSQ during the 1989-90 dairy year. Consequently, he lost some of his MSQ.

The British Columbia Milk Marketing Board (the "Milk Board") desires that dairy farmers produce 100% of their MSQ. This is desirable so that B.C. maintains its provincial share of MSQ. However, the Milk Board recognizes that a dairy farmer may have temporary problems in production. That is why there has been a 15% flexibility built into the Milk Market Sharing Order.

As a result of the mudslides, the Appellant had to dump nine milkings in June, 1990. After this happened, he wrote to the Milk Board asking them to reinstate his MSQ for this reason and for other reasons. By letter dated January 17, 1991 (Exhibit 1B in these proceedings) the Milk Board increased the Appellant's MSQ by 193 kg, being their calculation of the amount of MSQ lost as a result of the Appellant having to dump some of his milk. However, the Milk Board did not reinstate the full amount of MSQ which he had lost as a result of not producing 85% of his MSQ in the dairy year 1989 - 1990.

The Appellant's Notice of Appeal and his testimony at the Board Hearing set forth a number of reasons why the Board should reinstate the entire MSQ which he lost. These include:

- The isolation of his farm which makes it more difficult to obtain additional milk cows than in other parts of the province;
- The higher cost of shipping milk in the McBride area;
- The Appellant had built a large expensive barn prior to the mudslides;
- The Appellant had 20 bred heifers due to calve between August 1990 and January 1991;
- The Appellant had intended to purchase two additional milk cows from a dispersal sale on June 12, 1991, the date on which the first slide occurred;

- In May 1990 the Appellant had increased his milkings from two times a day to three times a day, but after the mudslides he returned to only two times a day. He did this of his uncertainty as to whether he would have sufficient feed to permit him to continue milking three times a day. For a period of time after the mudslides the feed truck was unable to get to this farm; and

- On a Sunday in July, 1990, a porcupine got in with his cows and fifteen of them got porcupine quills in their faces.

Mr. Thorpe testified that every year there are a significant number of producers who do not produce sufficient milk to maintain all of their MSQ. This happens for many different reasons, and the Milk Board cannot exempt producers from losing MSQ unless there are exceptional circumstances. One of such exceptional circumstances is the occurrence of a catastrophe, which is defined in S.2 of the Milk Market Sharing Orders 28 and 29.

Clearly, as was acknowledged by the Milk Board, the mudslides which occurred in the McBride area on June 12, 13, 14, 1990 fit into the category of "catastrophe". Equally clearly, the building of a barn, the cost of shipping milk, the heifers due to freshen, and the porcupine incident do not fit into the category of "catastrophe". These are factors which cannot be taken into account, as to do so would result in numerous applications by other dairy farmers for exemption from the provisions of the Milk Market Sharing Orders. The question remains: how much of the Appellant's failure to produce sufficient milk to maintain his MSQ can properly be attributed to the mudslides.

There is no doubt that the mudslides affected the Appellant's production of milk. The Board finds that they affected his production by forcing him to have to dump milk (for which adjustments have already been made), by stopping him from purchasing more cows, and by making his dairy ration supply uncertain, which resulted in his decision to change from three milkings per day to two milkings per day.

It is impossible to calculate precisely the amount of production lost through his inability to purchase two cows and the switch from three milkings per day to two milkings per day.

If the Appellant had purchased two cows on June 12, 1990, and if he had been able to continue milking three times per day a reasonable estimate of the amount of increased production from mid-June, 1990 to July 31, 1990 would be approximately 200 kg of MSQ.

Consequently, the Board orders that the Appellant's 1990-91 MSQ be adjusted by increasing it by 200 kgs of MSQ.


Of course, the resulting adjustments to the Appellant's 1991-92 MSQ must be made as well.

If the Appellant had not left his attempt to boost his production to the last minute, the mudslides would not have had so much of an effect on the Appellant's ability to produce 85% of his MSQ. Consequently, the Appellant shall not be entitled to any further payments for milk produced in the dairy year 1990-91, nor shall any adjustments to his over-quota levies for that year be made.

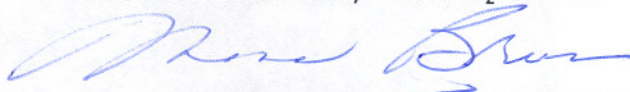
It should be noted that all of the facts before the Board at the hearing of this appeal were not before the Milk Board when it made its decision to reinstate MSQ only for the milk which the Appellant had dumped. The Board is confident that if the Milk Board had had all the information which was presented at the hearing of this Appeal, it would have come to a similar decision.

In making this decision, the Board is taking into account the small number of producers in the area where the Appellant farms. The Board recognizes that there are a limited number of producers from whom the Appellant can purchase MSQ. The Board also recognizes the importance of maintaining milk production in the more remote areas of the province.

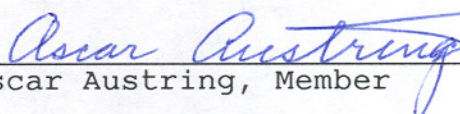
In accordance with the rules of appeal, and as the Appellant was partially successful, one-half of the Appellant's deposit will be returned to him.



Donna Iverson, Chairperson



Mona Brun, Vice-Chairperson



Oscar Austring, Member