

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

AND

IN THE MATTER OF AN APPEAL FROM THE BRITISH COLUMBIA MILK
MARKETING BOARD CONCERNING THE REDUCTION OF MANUFACTURED
MILK QUOTA

BETWEEN:

WINNERS HOLSTEIN FARMS LTD.

APPELLANT

AND:

BRITISH COLUMBIA MILK MARKETING BOARD

RESPONDENT

DECISION

British Columbia Marketing Board

Panel Members

Mr. Doug Kitson, Chair
Ms. Karen Webster, Member
Ms. Christine Moffat, Member

Date of Deliberations:

July 18, 1995

The matter before the British Columbia Marketing Board is an appeal by Winners Holstein Farms Ltd. from a decision of the British Columbia Milk Marketing Board, concerning the reduction of Manufactured Milk Quota (MMQ), as communicated in a letter dated May 9, 1995.

Background

1. This appeal arises from a previous appeal, concerning the same issue, by Winners Holstein Farms Ltd. (Winners Holstein) from the British Columbia Milk Marketing Board (Milk Board). This appeal was heard by the British Columbia Marketing Board (BCMB) on March 22, 1995.

Following this hearing the BCMB, by a BCMB decision dated April 4, 1995, referred the matter under appeal back to the Milk Board for resolution. This resolution to be not later than April 21, 1995.

2. Subsequently, the Milk Board resolved to re-confirm its decision not to reinstate the lost MMQ due to the failure of Winners Holstein to comply with Section 7.02 of the Milk Board's 'Consolidated Order'.
3. This resolution was communicated to Winners Holstein in a Milk Board letter dated May 9, 1995. On May 30, 1995, Winners Holstein filed an appeal from this resolution with the BCMB.
4. The parties agreed that this new appeal would be heard by the BCMB by:
 - a. written submissions from the parties; and
 - b. bringing forward the evidence presented during the previous appeal.

Findings

5. The BCMB finds, based on evidence presented during the hearing held on March 22, 1995 at Surrey, British Columbia and based on the written submissions subsequently presented to the BCMB concerning the new appeal, that the Milk Board erred in its decision.

6. The BCMB finds that the Milk Board's interpretation of their own 'Consolidated Order', relative to the "catastrophe" clause and Section 7.02(d), was, in this case, too narrow.
7. The BCMB finds that the Appellant did not manage Winners Holstein Farms Ltd. in the most effective fashion.
8. Notwithstanding paragraph 7, the BCMB finds that there were mitigating circumstances that should have been considered. The BCMB has concluded, based on the evidence made available to it, that a Milk Board decision based solely on a restrictive interpretation of s. 7.02(d) denied the Appellant a fair and proper consideration of the reinstatement of all or part of his MMQ.

Decision

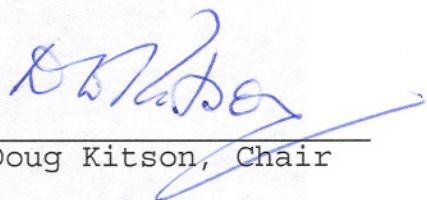
9. In accordance with Section 11(7) of the Natural Products Marketing (BC) Act, the BCMB hereby directs the Milk Board to reinstate fifty percent of the Appellant's MMQ originally deducted in accordance with the Milk Board's letter dated January 11, 1995; with such reinstatement being effective August 1, 1995, the commencement of the next Dairy Year.

Recommendations

10. The BCMB notes that all written appeals to the Milk Board related to the failure to meet established MMQ requirements are presented to a Market Share Advisory Committee (MSAC). The MSAC consists of four dairy producers recommended by dairy producer associations and appointed by the Milk Board to serve in an advisory capacity on various matters.

This includes the assessment of individual producer cases and the making of recommendations to the Milk Board with respect to the producer and loss of MMQ in question. This would therefore make this step the first stage of a potential appeal process. The BCMB recommends that the Milk Board give consideration to permitting the producer being reviewed to appear before this committee of his or her peers and have the opportunity to answer questions and give comment.

Dated at Vancouver, British Columbia, this 27th day of July, 1995.



Doug Kitson, Chair