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BRITISH COLUMBIA MARKETING BOARD

BETWEEN:

HANS LODDER

APPELLANT

AND:

BRITISH COLUMBIA VEGETABLE
MARKETING COMMISSION

RESPONDENT

REASONS FOR JUDGMENT

1. The Appellant appeals a decision of the British Columbia Vegetable Marketing Commission ("the Commission") which in effect deprives him of sharing in the proceeds of the sale by another producer of silverskin onions for the period July 27th to August 28th, 1982. The Appellant claims that even though his onions were not sold, undue preference was given to the onions of other growers. The essence of the Appellant's submission is that fairness requires that he be entitled to share in the proceeds of the sale of other growers' onions so that he be put in the same position as he would be in had a proportionate share of his onions been sold together with the onions of other growers. It is necessary to describe in some detail the events leading to this appeal in order to understand the problems posed by it.

2. By virtue of the Commission's General Orders, B.C. Reg. 258/80, the Interior Vegetable Marketing Agency ("the Agency") was designated as the:

"Sole agency through which all regulated products grown in a Third District shall be directed to licence shippers and packing houses and through which all sales or deliveries to producer-vendor stands, road-side stands, retailers or wholesalers must be reported and invoiced."

3. No. 4.(h) and (i) of the General Orders are also relevant and read as follows.

" (h) Every agency is authorized to conduct a pool or pools for the distribution of all proceeds received from the sale of the regulated product by or through it for such period or periods of time and covering such regulated products or grades thereof as it sees fit, subject to approval of the Commission before distribution thereof, and shall distribute the proceeds of sale for each pool, after deducting necessary and proper disbursements, expenses and charges as permitted under clauses (e) and (g) of this order in such manner that each person receives a share of the total proceeds in relation to the amount of variety, size, grade and class of the regulated product delivered by him and shall make payments in respect thereof until the total net proceeds are distributed.

(i) All designated agencies of the British Columbia Marketing Commission, as well as being responsible for the invoicing of all sales or regulated product (vii), shall be responsible for the collection of all proceeds from such sales and the conducting of a pool or pools for the distribution of all proceeds from such sales not less than 20 days following the month during which the sales were made except where the regulated product have pooling periods which extend beyond a monthly basis and such extended pooling periods have been approved by the Commission."

4. On October 7th, 1982, the Agency issued a directive to all silverskin onion growers which reads in part as follows:

"Dear Sirs:

Enclosed find cheque for silverskin pool #2 which covers silverskins shipped up to and including August 28. Where growers had shipped in excess of their quota on this date, you are being paid for your quota amount only. Any surplus that you have shipped up to August 28th above your quota will be moved into silverskin pool #3 along with shipments made after that date. This pool will be closed shortly. This manner of payout is a directive from the agency directors."

5. The effect of this directive is that certain producers of silverskin onions would receive less for the sale of the "over-quota" onions by their placement in pool #3 than they would have received had they been placed in pool #2. As well, it happened that the Agency distributed the proceeds from pool #3 not only to the producers who sold in excess of quota during the pool #2 period but also to producers who had not sold or delivered any product.

6. It is to be noted that the October 7th, 1982 directive from the Agency had never been approved by the Commission.

7. On February 23rd, 1983, three silverskin onion producers complained to the directors of the Agency about the October 7th directive and the manner in which pool payments were distributed. Portions of the February 23rd, 1983 letter read as follows:

"During pool #2 period, July 27th to August 28th, we shipped 66,230 pounds and were paid for 32,484 pounds on October 7th. The remainder 33,740 pounds from pool #2 were not paid out until October 20th in pool #3 at a substantially lower rate than pool #2. During pool #3 period, August 29th to the end of season, we shipped 1,325 pounds. In silver skin pool #3, there was a large amount dumped and paid for by money that was transferred from pool #2...

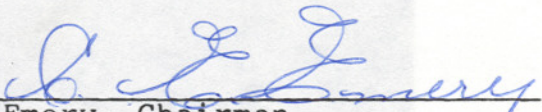
8. On June 2nd, 1983, the Commission met and ruled that the total amount of silverskin onions shipped during pool #2 period should have been paid out from that pool, notwithstanding that the pool consisted of product in excess of a growers quota. The Commission therefore ordered that adjustments be made to the pool in order to correct the error made by the agency.


9. The Appellant therefore appeals the decision of the Commission dated June 2nd, 1983.

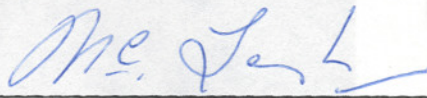
10. The Board is not, on balance, satisfied that the Agency during the period in question gave any undue or improper preference to the produce of other growers. Although there was some evidence that the Agency preferred the produce of other growers because of reduced transportation costs, there was also some evidence to the effect that the Appellant did not have produce available in a form suitable to the buyer during that time.

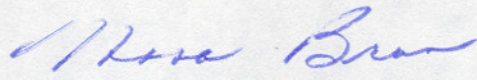
11. In our view, the Commission was correct in the decision that it arrived at. The Agency, however well motivated, nevertheless violated Commission's Order Rule 4(h) and (i) by failing to distribute the proceeds from sales within 20 days following the month during which the sales were made. The Agency also failed to comply with the Commission's orders as they read and have been consistently applied over many years insofar as it purported to allow a producer to share in proceeds for product that was not sold or delivered by him. Finally, it is clear that the Agency's decision depended upon the approval of the Commission which, as noted above, had not been given.

12. Accordingly, we are of the view that the Commission's decision was correct and therefore the appeal is dismissed.


C. Emery, Chairman


H. Black


N.C. Taylor


M. Brun

January 12, 1984
Richmond, B.C.