

90-  
90-  
9/13

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

AND

IN THE MATTER OF APPEALS TO THE  
BRITISH COLUMBIA MARKETING BOARD  
AGAINST DECISIONS OF THE  
BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION  
DATED JANUARY 8, 1990  
AND DATED FEBRUARY 27, 1990

BETWEEN:

JACK W. F. ARNAUD

APPELLANT

AND

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

RESPONDENT

REASONS FOR DECISION

Appearances:

J. W. F. Arnaud  
R. Wittal, Island Vegetable Co-operative  
I Vantreight, Vegetable Grower  
S. M. Johnson, Legal Counsel

APPELLANT

J. Harris, Chairman  
G. Wright, Vice-Chairman  
C. Amor, General Manager  
M. Eriksson, Legal Counsel

RESPONDENT

DATE OF HEARING

JUNE 11, 1990

1. The matters before the British Columbia Marketing Board ("the Board") are appeals by Jack W. F. Arnaud against the decision of the British Columbia Vegetable Marketing Commission ("Commission") on January 8, 1990 to reconvene a meeting of the Commission without attempting to notify all members, and the decision dated February 27, 1990 to remove the name of J.W. Arnaud from the ballot for the election of a commission member from District II.
2. The appeals were filed with the Board on February 9, 1990 and April 9, 1990, respectively and were heard in Victoria, British Columbia on June 11, 1990.
3. The Appellant and Respondent were represented by Counsel and were permitted to present witnesses and make oral and written submissions on the facts and the law.
4. The issues raised by the Appellant included:
  - (a) the Respondent had no authority to alter, expand, vary or qualify the definitions set out in the B.C. Vegetable Marketing Scheme. Therefore, the motion carried during the meeting of January 8, 1990 to interpret the words "the preceding 12 months" to mean the immediately preceding calendar year was ultra vires;
  - (b) the Respondent did not at any time provide notice that an amendment to the general orders would be discussed during the meeting of January 8, 1990 and the Appellant as an elected commissioner had a right and a duty to be heard on the matter discussed;
  - (c) upon the adjournment of the meeting held January 8, 1990 the members of the Commission who left the meeting could have had no idea that any other business would be discussed and further because the Commission had the power to legislate in this area and did not by reasons of the procedure that was adopted, the motion made after the meeting reconvened was invalid;
  - (d) the meeting of February 27, 1990 was convened without either written or oral notice to Mr. Arnaud of the subject matter;

- (e) at that meeting the presiding members of the Commission carried a motion that the Commission would not accept altered shipping slips to prove qualification as a commercial producer, which if valid, had the effect of disqualifying Mr. Arnaud from standing for election. Following which, the members of the Commission voted to remove Mr. Arnaud's name from the register of growers;
  - (f) while the General Manager sent notice to the Appellant that his name would be removed from the register of growers, the Commission itself made no such determination, and further the Appellant was given no opportunity to appear before the Commission to attest why this should not be done;
  - (g) the Appellant was a commercial producer and in order to maintain his eligibility as a commercial producer, had entered into an agreement with another Vancouver Island grower, I. Vantreight, whereby produce would be grown and marketed on behalf of the Appellant. And further, that there is nothing in the B.C. Vegetable Marketing Scheme or any other valid regulation which would prohibit such an arrangement.
5. The Appellant requested that the motions of the Commission dated January 8, 1990 and February 27, 1990 be quashed and further requested that the Board order that a special election be carried out in District II and that the Appellant be permitted to stand for election in that district.
6. The issues raised by the Respondent included:
- (a) within the powers granted to the Respondent under the British Columbia Vegetable Marketing Scheme are implied powers to do other things that are reasonably necessary to carry out the purposes of the Scheme;
  - (b) the words contained in Section 7(1) of the B.C. Vegetable Marketing Scheme which states "during the immediately preceding 12 months" are ambiguous and the Respondent acted within its jurisdiction to make the criteria in this section workable and certain, and established a policy as to how those words would be interpreted;

- (c) the policy to determine the date on which the immediately preceding twelve months would be measured, was developed to provide greater certainty to all parties involved in the election process.
- (d) section 3(1) of the Natural Products Marketing (B.C.) Act Regulations, B.C. Reg 3281/75, allows the Respondent to determine the procedure for calling and conducting its meetings by resolution. A resolution was passed to reconvene the meeting by members constituting a quorum, and this resolution was within the jurisdiction of the Respondent;
- (e) the Appellant was not denied an opportunity to address the policy discussed, in that the minutes did not become final until read and adopted by the members at the next meeting and the Appellant would have had opportunity to raise his concerns at that time;
- (f) the decision made February 27, 1990 not to accept altered shipping slips was made in good faith, based on the belief among Commission members that a fraud was being perpetrated on the Commission and further, the decision was taken to preserve the integrity of the B.C. Vegetable Marketing Scheme;
- (g) the notice of deletion sent to the Appellant met the requirements of Section 6(b) of the B.C. Vegetable Marketing Scheme;
- (h) the Respondent is not an adjudicative body and was not obliged to provide Mr. Arnaud with notice that a meeting would take place to discuss a particular policy, nor was it obliged to grant the Appellant a hearing prior to adopting a general policy;
- (i) the Appellant did not grow the regulated product and did not operate a farm where regulated product was grown and instead had Mr. Vantreight operate the farm and grow the product to be credited to the Appellant. Therefore, the Appellant does not meet the definition of a commercial producer and is not eligible to stand for election.

7. The Respondent requested that the appeal relating to the meeting of January 8, 1990 be dismissed and the motion passed at the reconvened meeting be upheld. The Respondent submitted that the Board should not endorse the arrangement between the Appellant and Mr. Vantreight and further that the Board should not order a new election with Mr. Arnaud's name on the ballot.
8. Having carefully considered the evidence presented and the statements made, the Board finds that:
  - (a) Section 7(1) of the B.C. Vegetable Marketing Scheme which states "A producer qualifies to be registered as a commercial producer in the district register for a district in which he operates a farm if, during the immediately preceding 12 months, regulated product of at least a gross value to the producer of \$5,000 has been grown on the farm and marketed from it through an agency of the commission" is clear and should be given its plain and ordinary meaning. This Board rejects the interpretation made by the Respondent;
  - (b) it is beyond the jurisdiction of the Respondent to enact an order which has the effect of changing a definition determined in the Statute;
  - (c) neither the Appellant nor the Respondent provided evidence of the existence or non-existence of a procedure for calling and conducting meetings as required by Section 3(1) of the Natural Products Marketing (BC) Act Regulations, B.C. Reg. 328/75, which states that "every marketing board or commission shall by resolution determine the procedure to be followed for calling and conducting its meetings;". Therefore, the Board is unable to determine whether the Respondent acted without regard to established procedure by reconvening the meeting of January 8, 1990 after a number of members had left.
  - (d) the Respondent was aware that the motions carried on February 27, 1990 would affect the Appellant directly, and acted without natural justice by not deferring discussion until the Appellant could be present and participate;

(e) the Appellant did not operate a farm from which product was marketed, he did not meet the qualifications of a commercial producer, and was not eligible to stand for election.

9. Therefore, in the matter of the appeal against the decision of the Commission dated January 8, 1990, the British Columbia Marketing Board hereby Orders that the order of the B.C. Vegetable Marketing Commission dated January 8, 1990 to amend the interpretation of "Commercial Producer" on page 2 of the Commission General Orders is varied to restate the wording set out in the B.C. Vegetable Marketing Scheme.

In keeping with this Board's Rules of Appeal the deposit shall be refunded to the Appellant.

10. In the matter of the second appeal, while the Board has found that the decision of the Commission was procedurally flawed because it did not comply with the rules of natural justice, this Board confirms the decision of the Commission to remove the name of J. W. Arnaud from the ballot for the election of a commission member from District II.

In keeping with this Board's Rules of Appeal, the Appellant's deposit is forfeit.

11. The Board suggests that if the Respondent has not adopted a procedure for calling and conducting meetings of the Commission, that they do so immediately.

Dated this 13<sup>th</sup>. day of September, 1990

  
\_\_\_\_\_  
D. M. Iverson, Chairperson

  
\_\_\_\_\_  
E. M. Brun, Vice-Chairperson

  
\_\_\_\_\_  
O. Austring, Member