

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

AND

IN THE MATTER OF AN APPEAL TO THE
BRITISH COLUMBIA MARKETING BOARD
AGAINST INTERIM ORDER #199
OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD
DATED JANUARY 28, 1988

BETWEEN:

A. M. VAN DER WERELD

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances: A. M. Van Der Wereld

APPELLANT

British Columbia Chicken Marketing Board
R. A. Stafford, General Manager
J. Hunter, Legal Counsel

RESPONDENT

DATE OF HEARING

FEBRUARY 7, 1990

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by A.M. (Tony) Van der Wereld of Interim Order #199 of the British Columbia Chicken Marketing Board, dated January 28, 1988, which reduced the price of chicken for one broiler cycle and adversely affected the Appellant's roaster returns due to the difference between roaster and broiler cycles.
2. The appeal was filed with the board on February 29, 1988. The hearing was deferred at the request of Mr. Van der Wereld and was subsequently heard in Victoria on February 7, 1990.
3. The Appellant was not represented by counsel, but was permitted to present a statement and make oral submissions on the facts and the law. The Respondent was represented by counsel and was also permitted to present witnesses and make submissions, written and oral, on the facts and the law.
4. The Appellant states that:
 - (a) Interim Order #199 was put in place to reduce the price of chicken for one broiler cycle.
 - (b) The price drop was planned in advance for a specific period and therefore the Respondent could have taken action to impact all growers equally.
 - (c) Because of the difference in the lengths of the roaster cycle, as compared to the broiler cycle, this reduction had a greater negative impact on the returns of roaster growers, including Mr. Van der Wereld, as compared to broiler growers and also affected roaster growers unequally, depending on their production stage during the period this interim order was in effect. The net effect for Mr. Van der Wereld was a loss of \$700.00 during the period this order was in effect.
 - (d) An alternative adjustment in the length of the cycles during which price changes are in effect, or variations in the prices of the different types of product (broiler versus roaster) are possible, and required to result in equitable treatment of all growers.
 - (e) In order to treat all chicken growers equally, the Interim Order needs to be adjusted "... to reflect the differences in the cycle lengths by reducing the roaster price by 3.2 cents per kilogram for one roaster cycle. As a consequence of changing Order #199, Orders 200 and 202, which follow, must also be adjusted".

"As an alternative to reducing the price for the roaster at the 12 week period," the roaster price should be reduced by 3.2 cents per kilogram for the single broiler cycle.

5. The Appellant requests that the British Columbia Marketing Board vary Order #199, 200 and 202 and possibly Orders 197 and 198 to remove the differential impact of price changes as between roaster growers and broiler growers, due to use of a broiler cycle as the period for reflecting prices, particularly for the period February 8 to April 11, 1988.
6. The Respondent stated that:
 - (a) Interim Order #199, to reduce the price of chicken by 4.4 cents per pound for one broiler cycle, was made to reflect market conditions at the time.
 - (b) At the time of making this order, the Chicken Board also indicated that the price would be adjusted upwards nine weeks later, at the end of this broiler cycle. This announcement was made in an effort to reduce the concern in the industry about downward changes in chicken prices.
 - (c) Various prices are set by order throughout each year to reflect market conditions. These price changes are set on a uniform basis for roaster growers and broiler growers, aimed at insuring equitable treatment of all growers in the industry.
 - (d) The specific impact of a specific price adjustment effected by pricing orders have a different impact on individual growers, "depending on the particular date at which that grower's cycle kicks in."
 - (e) Over time, however, these differences even out and growers are treated equitably.
 - (f) A retroactive adjustment in the price would result in a loss of faith in the integrity of the pricing process and should not be awarded unless a significant error has occurred.
 - (g) Since no significant error has occurred, the appeal by Mr. Van der Wereld should be dismissed.

7. The board concludes that:
 - (a) The pricing order (199) was applied uniformly to all growers;
 - (b) The pricing order had a different impact on individual growers depending on the date the particular grower's cycle commenced, but that the order was made in good faith and was not discriminatory.
8. The appeal is hereby dismissed. In accordance with this Board's rules of appeal, the whole of the Appellant's deposit shall be forfeit.
9. The board concludes that the Appellant provided useful information which could lead to an improvement in the manner in which price changes are made and suggests that the British Columbia Chicken Marketing Board consider meeting with Mr. Van der Wereld to fine-tune the process currently used.

(Original signed by):

Mona Brun, Acting Chairperson
O. Austring, Member
G. Aylard, Member
J. Reger, Member

Dated this 27th day of March, 1990 in Victoria, British Columbia.