

Northern Interior Dairyman's Association and the Mainland Dairymen's Association v. BC Milk Marketing Board

Decision Date: January 19, 2004

Keywords: Western Milk Pool, transportation advisory committee, sound and proper marketing policy, production rights, pooling, freight rates, advisory committee, exercise of discretion, containment policy, consultation

Issue:

The main issue under appeal was whether the Milk Board's May 29, 2002 decision setting the provincial base freight rate at \$2.50 per HL should be reversed or modified as being contrary to sound marketing policy.

Decision:

The issue of freight rates has been hotly contested in the dairy industry. Before this hearing, the BC Farm Industry Review Board (BCFIRB) twice sent the matter back to the industry to try to resolve themselves. As the industry remained divided and unable to come to consensus, the matter proceeded to hearing.

The Mainland Dairymen's Association (MDA) argued that the consultation leading to the Milk Board's decision to impose a \$2.50 cap on freight rates was inadequate as the MDA was never consulted, did not consent to this rate and were not given reasons for this decision. In addition, they argued that the composition of the Transportation Advisory Committee (TAC) was flawed as there was no MDA member on the committee. The panel rejected this argument and accepted that the Milk Board's process was appropriate after considering the evidence of its considerable consultation.

The panel then moved on to consider the merits of the freight rate cap of \$2.50 as established by the Milk Board. The issue here was not about the merits of pooling, but rather to what degree should producers in each zone be responsible for their own freight costs. The evidence showed that the pooled rate as approved by the Milk Board would result in a minimal cost to MDA producers, but the higher rate desired by the MDA would cause significant costs to the producers in the Bulkley Valley, Cariboo, Kootenays and the Peace River and likely disrupt the businesses of outlying producers. On further analysis, the panel came to the conclusion that a total pooling model, where all producers shared costs equally, would be in the best interests of the dairy industry as a matter of sound marketing policy.

Order:

The Milk Board was ordered to implement a total pooling system across the eight provincial zones.