

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110318

**Docket: A-70-10
A-133-10**

Citation: 2011 FCA 106

**CORAM: BLAIS C.J.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

GROUPE WESTCO INC.

Appellant

and

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Respondent

Heard at Ottawa, Ontario, on March 15, 2011.

Judgment delivered at Ottawa, Ontario, on March 18, 2011.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**BLAIS C.J.
NOËL J.A.**

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110318

**Docket: A-70-10
A-133-10**

Citation: 2011 FCA 106

**CORAM: BLAIS C.J.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

GROUPE WESTCO INC.

Appellant

and

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Respondent

REASONS FOR JUDGMENT

TRUDEL J.A.

[1] This is a consolidated appeal from two decisions of the Competition Tribunal (the Tribunal or the Judge). Under File A-70-10, Groupe Westco Inc. (the appellant or Westco) appeals from a decision dated January 22, 2010 (2010 Comp. Trib. 2, Blanchard J.) finding it in contempt of a previous order of June 26, 2008 (the Interim Supply Order or ISO). File A-133-10 concerns a decision dated March 18, 2010 (2010 Comp. Trib. 5, Blanchard J.) dismissing Westco's motion for directions regarding the interpretation of the ISO.

[2] Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited (the respondent or Nadeau) is a primary chicken processor whose chicken supplies come from different chicken producers (together the producers), Westco being Nadeau's main supplier.

[3] In early 2008, the producers advised Nadeau that they would cease supplying it with live chickens in order to favour a new business partner (Olymel). Ensued Nadeau's application under section 75 of the *Competition Act*, R.S.C. 1985, c. C-34 (the Act) for an order requiring the producers to continue to supply Nadeau with live chickens (the application was eventually dismissed by the Tribunal, 2009 Comp. Trib. 6 (app'd: matter under reserve)). Pending the Tribunal's decision on the section 75 application, Nadeau sought an order pursuant to section 104 of the Act requiring the producers "to supply it with live chickens on the usual trade terms, in the volumes previously supplied". On June 26, 2008, the Tribunal granted the interim relief sought in order to maintain the status quo between the parties and protect Nadeau's business pending the hearing on the merits.

[4] The ISO's key passages are found at paragraphs 57 and 58. In their relevant parts, they read:

57. The Respondents are to continue to supply the Applicant with live chickens on the usual trade terms at the current level of weekly supply, namely 271,350 live chickens.

58. ... This volume of supply is to be reduced by 25,000 live chickens per week upon the first delivery of the live chickens to [Nadeau] expected ... in September, 2008, and further reduced by any other supply of live chickens [Nadeau] may secure during this interim period [from other sources]. [I underline.]

[5] Following the issuance of the ISO, a dispute arose between the parties as to its interpretation and implementation. Briefly stated, Westco took the position that its obligation under the ISO was defined by reference to the total weight of the chickens delivered rather than by the number of heads. Adopting this view, Westco, without prior authorization by the Tribunal, took it upon itself to change the pattern of supply by supplying Nadeau with fewer chickens having a greater weight. Faced with this change, and after requesting without success that Westco continue to supply it as it had in the past, Nadeau initiated the contempt proceeding. In response, Westco filed a motion alleging that the ISO was ambiguous and had to be clarified.

[6] At the contempt hearing, there was no dispute as to the existence of the ISO and knowledge of that order by Westco, two of the constitutive elements of contempt that Nadeau needed to establish beyond a reasonable doubt. The evidence surrounding the third and final element of contempt, Westco's knowing disobedience of the ISO, was the focus of that hearing.

[7] Westco argued that the ISO was ambiguous and open to multiple interpretations. It submitted that it had complied with the ISO by offering to supply Nadeau with all of its production of heavier chickens, as permitted under its production quota, except for the reduction contemplated by paragraph 58 of the ISO for supplies secured by Nadeau from other sources. In the extreme, the position of Westco is illustrated by one of its witnesses who testified that Westco's requirement would be met if Westco could produce and deliver to Nadeau one chicken weighing 2,730,000 kgs.

[8] In my view, Westco's contention that the ISO was ambiguous only holds if one forgets that the purpose of the ISO was to maintain the status quo between the parties. Westco was well aware of the supply pattern at the time of the ISO and the importance to Nadeau of maintaining this pattern in terms of size of the chickens supplied and the total weight delivered to it. Instead, Westco took it upon itself to unilaterally change the pattern of supply because, as the Judge found, it wanted to pursue its plan to produce larger chickens in the context of a more lucrative venture with Olymel. In so doing it ceased to comply with the ISO in so far as it relates to the size of the chickens.

[9] I can detect no error in the judge's conclusion that the ISO was clear and that Westco deliberately breached its terms. Therefore, there is no need to address the other issues raised by Westco, as they would not change the final outcome.

[10] These reasons dispose of both appeals which I propose to dismiss with one set of costs assessed on a solicitor and client basis in relation to Appeal A-70-10. A copy of these reasons will be filed in appeal A-133-10 as reasons therein.

“Johanne Trudel”

J.A.

“I agree
Pierre Blais C.J.”

“I agree
Marc Noël J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-70-10
A-133-10

STYLE OF CAUSE: Groupe Westco Inc. v. Nadeau
Ferme Avicole Limitée/ Nadeau
Poultry Farm Limited

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: March 15, 2011

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: BLAIS C.J.
NOËL J.A.

DATED: March 18, 2011

APPEARANCES:

Éric C. Lefebvre
Martha A. Healey
Alexandre Bourbonnais

FOR THE APPELLANT

Leah Price
Andrea M. Marsland
Ron E. Folkes

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ogilvy Renault, S.E.N.C.R.L., s.r.l.
Montreal, Quebec

FOR THE APPELLANT

Fogler, Rubinoff LLP
Toronto, Ontario

FOR THE RESPONDENT

Folkes Legal Professional Corporation
Brampton, Ontario