

~~P.C.~~  
~~GEIGL~~

Judgment  
22, 1966

No. 8 of 1966.

# In the Privy Council.

---

---

## ON APPEAL

FROM THE COURT OF APPEAL OF NEW ZEALAND

---

---

BETWEEN

10 JAMES EDWARD JEFFS, JOHN GORDON  
ROBINSON, COLIN EDWARD PEARCE  
all of Ruawai and BERTRAM EARLE  
DREADON of Tokatoka all of them Farmers  
suing on behalf of themselves and 88 Dairy  
Farmers in the Ruawai District . . . . . *Appellants.*

AND

THE NEW ZEALAND DAIRY PRODUCTION  
AND MARKETING BOARD a body  
corporate established under the Dairy  
Production and Marketing Board Act, 1961,  
having its office in Wellington . . . . . *First Respondent.*

AND

20 THE RUAWAI CO-OPERATIVE DAIRY  
COMPANY LIMITED a duly incorporated  
company having its registered office at  
Ruawai . . . . . *Second Respondent.*

AND

THE NORTHERN WAIROA CO-OPERATIVE  
DAIRY COMPANY LIMITED a duly  
incorporated company having its registered  
office at Dargaville . . . . . *Third Respondent.*

AND

30 THE MAUNGATUROTO CO-OPERATIVE  
DAIRY COMPANY LIMITED a duly  
incorporated company having its registered  
office at Maungaturoto . . . . . *Fourth Respondent.*

AND

ERIC BAKER of Ruawai, Farmer, sued on  
behalf of himself and 125 Dairy Farmers in  
the Ruawai District . . . . . *Fifth Respondent*

~~P.C.~~ 87077  
~~GEI 66~~

---



---

## Case

UNIVERSITY OF LONDON  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES

FOR FIRST RESPONDENT,  
 24 APR 1967

THE NEW ZEALAND DAIRY PRODUCTION AND  
 MARKETING BOARD

---



---

25 RUSSELL SQUARE  
 LONDON, W.C.1.1.

This is an appeal from the judgment of the Court of Appeal of New Zealand, comprising the Honourable Mr. Justice North, President, the Honourable Mr. Justice McCarthy and the Honourable Mr. Justice McGregor, dated the 30th day of July, 1965, which had dismissed an appeal by the Appellants from the decision of the Honourable Mr. Justice Hardie Boys in the Supreme Court of New Zealand, dated the 21st day of December, 1964.

10

P. 6, l. 8.

In the Supreme Court the Appellants as plaintiffs sought a Writ of Certiorari directed against the First Respondent (then First Defendant) to quash a zoning order made by the First Respondent on the 30th day of May, 1963, defining a milk zone for the Second Respondent (then the Second Defendant), The Ruawai Co-operative Dairy Company Limited. The Appellants at that time and previously were suppliers of dairy products to the Second Respondent. The Appellants also sought a Writ of Injunction to restrain the First Respondent from taking any steps to assess compensation to be paid by the Third Respondent, The Northern Wairoa Co-operative Dairy Company Limited (then the Third Defendant) 20 to the Second Respondent. The claims of the Appellants had been dismissed by the Supreme Court.

P. 7, l. 1-9.

P. 6, l. 19.

P. 53, l. 36.

2. Both in the Supreme Court and the Court of Appeal counsel for the Third Respondent supported the submissions made by counsel for the Appellants. In the Supreme Court counsel for the Second Respondent and the Fifth Respondent, Eric Baker (then the Fifth Defendant), supported the submissions made by counsel for the First Respondent. In the Court of Appeal counsel for the First Respondent appeared also for the Second Respondent. The Fifth Respondent was not represented and made no submission. In the Supreme Court the Fourth Respondent, 30 The Maungaturoto Co-operative Dairy Company Limited (then the Fourth Defendant) abided the order of the Court and it was not represented by counsel in that Court or in the Court of Appeal.

The First Respondent has been advised by the solicitor for the Second Respondent that the Second Respondent does not propose to make any submissions in this appeal. The First Respondent has been advised by the solicitors for the Second, Fourth and Fifth Respondents that they do not propose to make any submissions in this appeal.

3. The First Respondent was constituted by the Dairy Production and Marketing Board Act, 1961 (hereinafter referred to as "the 1961 40 Act"). The preamble to that Act is as follows :—

"An Act to consolidate and amend the law relating to the acquisition and marketing of dairy produce, to establish a New

Zealand Dairy Production and Marketing Board, and to define its functions and powers.”

Since the passing of the 1961 Act the First Respondent has regarded itself as being the sole body to continue the authority vested in its predecessors to zone within New Zealand areas in which dairy farmers, other than those on town supply, would supply their whole milk or cream to certain dairy products manufacturing factories. Similarly the First Respondent has regarded itself as having the sole authority to determine, in the absence of agreement, the compensation which one such manufacturing company  
 10 should pay to another when, as the result of a zoning order, it gains supplies formerly sent to the other company.

4. This litigation arises out of a decision of the First Respondent made on the 29th or 30th day of May, 1963, promulgating a new zoning order affecting primarily the Appellants, the Second Respondent and the Third Respondent in an area in the North Auckland District. In brief the position prior to the said decision of the First Respondent was that all the Appellants, by virtue of an existing zoning order, were required to supply all their cream to the Second Respondent and, by virtue of an agreement entered into (inter alia) by the Second and Third Respondents,  
 20 all their whole milk also had to be supplied to the Second Respondent. That agreement expired on the 31st day of May, 1963. The said new zoning order had the effect, firstly, that part of the former area within the zone of the Second Respondent, namely, the Pouto Peninsula, was excluded from the Second Respondent and included in the area of the Third Respondent and, secondly, the whole of the remaining area zoned to the Second Respondent was zoned for both cream and whole milk. The First Respondent had also informed all parties concerned of the intention that appropriate compensation be paid by the Third Respondent to the Second Respondent. The Appellants are dissatisfied with this  
 30 decision.

5. The position in respect of the supply and the manufacture of dairy products within the areas formerly zoned to the Second and Third Respondents, which adjoined each other, had been under consideration  
 P. 52, l. 12.  
 by the First Respondent for a lengthy period prior to the events and the decision, which are the subject of this litigation. In particular it was recognised that some action by the First Respondent would be necessary when the agreement relating to the supply of whole milk to the Second  
 P. 23, l. 2.  
 Respondent expired on 31st May, 1963. In the absence of a further agreement or a zoning order relating to the supply of whole milk the  
 40 dairy farmers in the area zoned to the Second Respondent would be free to supply their whole milk to any factory. Following receipt of petitions by or on behalf of certain dairy farmers who were then suppliers to the Second Respondent and by the Second Respondent the First Respondent on the 30th day of January, 1963, resolved to appoint three of its members  
 P. 100, l. 34.  
 as a zoning committee to investigate and report back to the First Respondent on the question of supply as between the Second and Third Respondents. It was further resolved that the Director of the Dairy Division of the Department of Agriculture, Mr. Foy, be associated with the committee.

P. 92, l. 10.

By a circular dated 28th March, 1963, the First Respondent informed the Appellants and others that the said committee would hold a public hearing at Ruawai on the 29th April, 1963, at which opportunity would be given to all interested parties to tender submissions.

The public meeting was duly held on that and the following day. Those represented by counsel were the Appellants and the Second, Third, Fourth and Fifth Respondents. Counsel for the Appellants and Third Respondent raised two preliminary objections, namely, that the First Respondent had not acted correctly in appointing a committee and that the First Respondent had a disqualifying financial interest in the 10 proceedings.

The hearing continued but without prejudice to those objections.

P. 94, l. 12.

6. In due course the said committee submitted to the First Respondent its report and recommendations. These were considered by those members of the First Respondent present at the meeting held on the 29th and 30th May, 1963.

P. 97.

After discussion the First Respondent resolved to adopt the report and recommendations of the committee.

On 30th May, 1963, a telegram advising of the First Respondent's decision was sent (inter alia) to the solicitors for the Appellants. 20

P. 31, l. 39, to  
p. 35, l. 30.

A more complete summary of the foregoing circumstances is set out in the judgment of Hardie Boys, J., in the Supreme Court.

Pp. 1-5.

7. In their Statement of Claim, dated the 20th August, 1963, the Appellants alleged four separate causes of action. In summary the effect of the submissions of counsel for the Appellants made in support of these in both the Supreme Court and the Court of Appeal was as follows :—

(A) That the zoning powers earlier conferred on the Board's predecessor, the New Zealand Dairy Board, by the Dairy Factory Supply Regulations, 1936, did not pass to the Board upon the enactment of the Dairy Production and Marketing Board Act, 1961. 30  
(The New Zealand Dairy Board (hereinafter referred to as "the old Board") was constituted initially by the Dairy Produce Act, 1923, and re-constituted by the Dairy Board Act, 1953.)

(B) That the only authority of the First Respondent to make a zoning order was as provided in Section 40 of the 1961 Act. This required the making of regulations and no regulations had been made.

(C) That as the First Respondent was the holder of debentures given by the Second Respondent to secure loans to the Second Respondent the First Respondent had a financial interest in the 40 subject matter of the zoning application and consequently was disqualified from acting by reason of being a judge in its own cause contrary to the principles of natural justice.

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

24 APR 1967

25 RUSSELL SQUARE  
LONDON, W.C.1.

(D) That the First Respondent had improperly delegated to the said committee its quasi-judicial function by delegating to that committee :—

(i) the hearing of evidence and consideration of submissions by counsel ; and

(ii) the actual decision.

8. The hearing of the action took place on 16th November, 1964, in the Supreme Court, at which the only oral evidence given was that of Mr. P. S. Green, the Secretary of the First Respondent.

10 Hardie Boys, J., gave judgment on 21st December, 1964. After setting out the evidence, which had not been in dispute, he considered in turn each of the causes of action put forward by the Appellants, and in turn rejected each of them. He accordingly gave judgment for the First Respondent with costs. Pp. 31-53. P. 53, l. 28.

9. The Appellants appealed against that judgment to the Court of Appeal (North, P., McCarthy and McGregor, JJ.), who gave judgment on 30th July, 1965, dismissing the appeal (North, P., dissenting). Pp. 54-91.

20 North, P., in his judgment, found in favour of the First Respondent on the issues set out in paragraph 7 (A), (B) and (C) above, but was in favour of allowing the appeal on the ground that the First Respondent itself had not heard the evidence and representations of interested parties. P. 54.

McCarthy and McGregor, JJ., in their separate judgments considered and dismissed each of the causes of action raised by the Appellants. Accordingly the appeal to the Court of Appeal was dismissed with costs. Pp. 66, 78.

10. On 7th February, 1966, the Appellants were granted final leave to appeal to Her Majesty in Council. P. 91.

11. The First Respondent respectfully submits that the judgments of Hardie Boys, J., in the Supreme Court and of McCarthy and McGregor, JJ., in the Court of Appeal are correct and should be upheld.

30 It is accepted by the Appellants that The Dairy Supply Regulations, 1936 (Reprint S.R.1963/147) (hereinafter referred to as "the 1936 Regulations"), at all material times were valid and in force. Regulations 5 and 7 authorise zoning for cream and whole milk respectively. Regulation 12 authorises the fixing and awarding of compensation to a manufacturing dairy prejudicially affected (inter alia) by a zoning order. P. 37, l. 17.

40 From 1948 until the passing of the 1961 Act the authority to make and amend zoning orders and to fix and award compensation pursuant to the said Regulations was the old Board. The First Respondent contends that by reason of the relevant provisions in the 1961 Act, and particularly by reason of the provisions of Section 71 (2), the First Respondent replaced the old Board as the authority in regard to zoning and compensation.

12. The First Respondent is not prohibited from acting under the 1936 Regulations by reason of the admitted fact that no regulations have been made as authorised by Section 40 of the 1961 Act. It is submitted that the effect of this Section is no more than that it provides the First Respondent with the means for recommending new regulations if and when it finds it advisable to do so. If it was mandatory for the First Respondent to have the authority of regulations made under this Section there would be two curious results both of which, it is submitted, would be contrary to the intention of the 1961 Act. In the first place the First Respondent would be powerless to act in these highly important matters of zoning for the period between its being constituted and the making of the new regulations. Further, the 1936 Regulations would be valid and in force but with no person to carry them into effect. Reference is made also to Section 13 of the Dairy Board Act, 1953, which was in terms similar to that of Section 40 of the 1961 Act. No regulations were made under that Section and the old Board exercised its zoning and incidental authority under the 1936 Regulations. It is submitted that in transferring the same authority to the First Respondent and not repealing the 1936 Regulations the Legislature intended that the First Respondent should have the authority to act under the 1936 Regulations until these were replaced by new Regulations made pursuant to Section 40 of the 1961 Act.

13. In respect of the submission that the First Respondent had a disqualifying financial interest in the subject matter of the zoning order, the First Respondent submits that the short and complete answer is that the Legislature has recognised that in the discharge of its authority to make zoning orders the First Respondent will frequently be in the position when it has at least a technical financial interest in the subject matter. The First Respondent also submits that in the circumstances and with no other person authorised to act under the 1936 Regulations it was a matter of necessity for the First Respondent to act despite its financial interest.

Further and alternatively the First Respondent submits that it has not a sufficiently direct or personal financial interest in the subject matter so as to create a legal presumption of bias. In this respect the First Respondent respectfully submits that the reasoning to the contrary in all the judgments is erroneous. There is no evidence of actual bias on the part of the First Respondent.

14. The First Respondent submits that the allegation of the Appellants that it delegated its quasi-judicial function to the said zoning committee is erroneous. By way of background to its submissions under this heading the First Respondent draws attention to the following :—

(A) The First Respondent is comprised of thirteen members. Section 12 (4) of the 1961 Act provides that seven members are necessary for a quorum. There are obvious practical difficulties for even a quorum to hear every representation relating to a proposal to consider making a zoning order.

(B) There is statutory recognition of this in the power given by Section 13 of the 1961 Act enabling the First Respondent to appoint

a committee to advise and to furnish a report to the First Respondent on any matter concerning the dairy industry.

(C) Section 12 (10) of the 1961 Act authorises the Board to regulate its own procedure. The 1936 Regulations lay down no procedure for the hearing of representations when the making or amending of a zoning order is under consideration.

10 (D) The undisputed facts establish that the Appellants and others were given adequate notice of the public hearing to be held by the committee and of the subject matter involved. When the hearing was held they were afforded full opportunity in the presence of the committee and of other interested parties to state their case and later to make oral or written submissions.

(E) The three members of the committee were also members of the First Respondent and were all present when their report was considered by the First Respondent at its meeting on 29th and 30th May, 1963. The Secretary of the First Respondent was also present at both meetings.

20 (F) In his judgment in the Supreme Court Hardie Boys, J.,<sup>P. 52, l. 30.</sup> who heard the only evidence given viva voce, found that there was no evidence that the Board had surrendered its judicial function to the Committee or had merely adopted the recommendations of the committee without giving these the judicial consideration which was warranted.

(G) The evidence establishes that the whole question of supply and zoning in the areas concerned had been under consideration by the First Respondent in one way or another for some time and consequently that members had knowledge of the problems and issues involved.

30 (H) There is no evidence nor has it been submitted on behalf of the Appellants that in the course of the evidence or submissions given or made to the committee there arose for the first time some new matter of material importance of which other members of the First Respondent were not or were unlikely to be aware from their own general knowledge of the circumstances.

40 It is conceded that from the point when interested parties were afforded the opportunity at Ruawai on the 29th and 30th April, 1963, to make their representations before the committee through to when the decision of the First Respondent was made on the 29th or 30th May, 1963, the First Respondent, in addition to its administrative capacity relating to the same matters, was exercising a function quasi-judicial in nature. The First Respondent submits that on the facts as found by Hardie Boys, J., in the Supreme Court or otherwise not in dispute the First Respondent sufficiently exercised that quasi-judicial function.

15. In the first place it is submitted that there was no delegation of this judicial function to the committee. As is permitted by Section 13 of the 1961 Act and also at common law the First Respondent properly engaged the services of the committee to make the investigation, to

obtain information and to report the results of these and its recommendations for the consideration of the First Respondent. The circular to suppliers dated 28th March, 1963, stated that the decision would be made by the First Respondent and it is submitted that this in fact occurred.

Before reaching their decision those members of the First Respondent present at the meeting had before them the report of the committee. It is submitted that this report was a sufficiently full and comprehensive summary of the evidence before and the submissions received by the Commission. The evidence discloses that there was at least reasonably full discussion on the report. The members of the committee were present and there was the personal knowledge which each member of the First Respondent had of the matters in issue. 10

16. It is submitted that in these circumstances the First Respondent did exercise its judicial functions sufficiently.

The First Respondent submits that its actions in this regard are within the principles established in *Local Government Board v. Arlidge* [1915] A.C. 120. The First Respondent refers to the following passage in the speech of Lord Moulton at p. 150 :—

“ It is said, truthfully, that on such an appeal the Local Government Board must act judicially, but this, in my opinion, only means that it must preserve a judicial temper and perform its duties conscientiously, with a proper feeling of responsibility, in view of the fact that its acts affect the property and rights of individuals.” 20

Mutatis mutandis it is submitted that this statement applies to the circumstances of this case.

P. 63, l. 8.

In the course of his judgment North, J., refers to “ the important distinction ” between the facts in *Arlidge* and those in the present case in that in the former the Board had before it the whole of the evidence presented to the inspector. It is submitted that the decision in *Arlidge* is not to be interpreted as requiring a verbatim report of the proceedings and for this to be considered by the person who makes the decision. It is also submitted that any disadvantage which members of the First Respondent may be said to have had because they did not have before them all of such record as was taken of the evidence and the written submissions of counsel was compensated for to a material extent by their own knowledge of the circumstances and the presence at the meeting of the three members of the committee. 30

17. Alternatively, and if it be held that the First Respondent did delegate part of its quasi-judicial function to the committee, it is submitted that in the circumstances the First Respondent could properly delegate that part to the committee. The First Respondent respectfully adopts in this regard the reasoning of McCarthy, J., in the Court of Appeal. 40

P. 73, l. 35 to  
p. 76, l. 30.

18. In the Supreme Court and the Court of Appeal counsel for the First Respondent reserved the right to challenge the decision of the



Court of Appeal in *New Zealand Dairy Board v. Okitu Dairy Company Limited* (1953), N.Z.L.R. 366. The First Respondent thinks it is appropriate to record that it does not propose to do so in this appeal.

19. The First Respondent respectfully submits that the judgment of the Court of Appeal was correct and should be upheld, and that this appeal should be dismissed, with costs, for the following, among other

## REASONS

- 10
- (1) BECAUSE the First Respondent had full powers of zoning under the Dairy Factory Supply Regulations, 1936.
  - (2) BECAUSE the Dairy Factory Supply Regulations, 1936, were in full force at all material times.
  - (3) BECAUSE the First Respondent was not disqualified from carrying out its zoning functions by reason of any financial interest.
  - (4) BECAUSE the First Respondent did not have a sufficient financial interest to create a legal presumption of bias.
  - (5) BECAUSE the First Respondent did not delegate any part of its quasi-judicial function.

20

  - (6) BECAUSE at all times the First Respondent acted correctly within its statutory powers and responsibilities.
  - (7) BECAUSE of the other reasons given in the judgment of Hardie Boys, J., in the Supreme Court and in the judgments of McCarthy, J., and McGregor, J., in the Court of Appeal.

E. DENIS BLUNDELL.

MERVYN HEALD.

**In the Privy Council.**

---

---

**ON APPEAL**

*from the Court of Appeal of New Zealand*

---

---

BETWEEN

**J. E. JEFFS and Others** - - *-Appellants*

AND

**THE NEW ZEALAND  
DAIRY PRODUCTION AND  
MARKETING BOARD and  
Others** - - - - - *-Respondents*

---

---

**Case**

FOR THE FIRST RESPONDENT

---

---

WRAY, SMITH & CO.,  
1 King's Bench Walk,  
Temple, E.C.4,

*Agents for—*

BELL, GULLY & CO.,  
Wellington,  
New Zealand,  
*Solicitors for the Respondents  
other than the Second Respondent.*