

THE SECRETARY REPORTS

Arbitration Report



F. E. Gillette
Chairman, Committee on
Arbitration Appeals

As required in section 8 (k) of the Arbitration Rules, your Secretary reports regarding Case No. 1401, Scroggins Grain Company, Minneapolis, Minnesota, Plaintiff and Checkerboard Elevator Company, Buffalo, N. Y., Defendant. This case concerns a contract concluded on March 18, 1944, by which the plaintiff purchased from the defendant 600 tons of Canadian fine-ground barley at \$55.40 per ton delivered Minneapolis, Minn., to be shipped during March, April and May, 1944, as U. S. cars and export permits were available. The defendant delivered 80 tons of the commodity during the contract period and the case pertains to the 520 tons which were not shipped. After being notified by defendant on May 13, 1944, the plaintiff attempted to purchase fine ground barley on the open market to fulfill its sales. The Cereal By-Products Co., Chicago, Ill., acted as brokers in the transaction, which was covered by its confirmation. With regard to the terms of the broker's confirmation, as compared to the contract which both plaintiff and defendant agree supersedes the confirmation, the confirmation stated "scattered as U. S. cars and export permits are available", whereas the contract omitted the word "scattered" as indicated above. The crux of the case revolves around the question as to whether or not the above qualifying words in the contract made it contingent and conditional.

The majority of the arbitration committee found in favor of the plaintiff on the basis that the term "scattered as U.S. cars and export permits are available", was not a condition qualifying termination of the contract, rather it merely sanctioned and approved of shipments at any date within the period of the contract-- that is, the defendant as sellers were privileged under the terms of the contract to fulfill its sale, in whole or in part, on any day during March, April and May. If it was intended that the term was to be used as a determination as to whether or not the contract would be fulfilled, then the specified period of shipment, March, April and May, would have meant nothing. The majority further held that for a considerable period of contract time permits were being issued, and in view of the fact that the defendant was privileged to fulfill the contract within any period of the stipulated time, the defendant should not be excused from failing to make delivery even though during a part of the period export permits were not available. The majority directed that the full claim of the plaintiff for \$6,166.13, plus interest, be awarded to it. The sum of \$6,166.13 represents the difference between the price paid by the defendant for fine-ground barley on the market at Minneapolis, Chicago and St. Louis and the price of Canadian fine-ground barley as stated in the contract. The plaintiff did not purchase on the open market all the quantity of 520 tons undelivered on the contract, and in determining the amount of its claim, it did adjust the claim equitably to reflect the price of the barley, as stated in the contract.

The minority held for the defendant basing his decision on the existence of a conditional contract, which condition was that the contract could only be fulfilled as cars and permits for shipping the fine-ground barley from Canada, were available. The minority further believed the evidence submitted by the defendant that export permits were not obtainable in sufficient quantity to enable defendant to ship the full 600 tons. In addition, at the time of the contract shipments of grain and feed from Canada were restricted and the plaintiff must have been aware of that fact which might affect delivery.

THE GRAIN & FEED DEALERS NATIONAL ASSOCIATION NATIONAL NEWS LETTER

The defendant, acting in accordance with the arbitration rules, appealed the case, which was then considered by the Committee on Arbitration Appeals, Mr. Frank E. Gillette, Chairman, Gillette Grain Co., Nashville, Tenn. The Committee on Arbitration Appeals reversed the decision of the Arbitration Committee and awarded its decision in favor of the defendant. The conclusions of the Committee on Arbitration Appeals follow:

"That the contract was conditional upon the availability of export permits from Canada, a condition common to such contracts for Canadian grain, and implied in this particular contract, viz: SHIPMENT MARCH-APRIL-MAY AS U. S. CARS AND EXPORT PERMITS ARE AVAILABLE. When a Canadian export permit has once been issued, it is good for shipment at any time. The above qualification as to time of shipment depending upon availability of export permits, clearly indicates, therefore, that both plaintiff and defendant understood that the export permits were not already available, but must subsequently be obtained. This being true, there was not only the question of when permits might be obtained, but whether they might be obtained at all.

"Canadian export permits were available to a Canadian exporter only after a corresponding sale for export had been made. The defendant made such a purchase on the same date as the contract involved, and on the same terms. The Canadian Wheat Board issued export permits for limited quantities of ground Barley after March 18, 1944, the date of the contract, but only for 20 percent of the defendant's purchases. No permits were issued after April 17, 1944, and the defendant had no possibility of receiving further deliveries against his purchase contracts.

"That the plaintiff was without his right to 'buy in' American Ground Barley for defendant's account to complete the contract. The contract plainly stipulated FINE GROUND CANADIAN NUMBER ONE FEED BARLEY MEAL, based on a fluctuating equalization fee and application of American Ground Barley was not contemplated."

The plaintiff, following the decision of the Committee on Arbitration Appeals, asked for reconsideration of the decision. The attorney for this National Association ruled that under the Arbitration Rules there was no further provision for appeal but as requested by the plaintiff, the case could be reconsidered by the Committee on Arbitration Appeals upon the submittal of a petition by the plaintiff, with recommendations for reconsideration. The petition submitted was reconsidered by the Committee on Arbitration Appeals which, after careful consideration, reaffirmed its finding for the defendant.

MEMBERSHIP PROGRESS

	Direct	Branch	Assoc.	Affil. Assn.	Total
Membership -- December 15, 1946.....	989	159	20	34	1202
Membership -- December 15, 1947.....	1071	208	27	37	1343