

Case No. 1414

ARBITRATION REPORT

As required in Section 8 (k) of the Arbitration Rules, your Secretary reports regarding Case No. 1414, R. H. Baumgartner & Co., St. Louis, Mo., Plaintiff and the Gaiennie Grain Co., Inc., New Orleans, La., Defendant. This case pertains to the settlement for a carload of oats sold by R. H. Baumgartner & Co. to Gaiennie Grain Co. R. H. Baumgartner & Co. is a commission firm operating under rules and regulations of the St. Louis Merchants Exchange, and, therefore, it acted as the commission representative of Gaiennie Grain Co. in the purchase of a carload of No. 1 Heavy Mixed Oats on August 14, 1946, on the basis of St. Louis official grades and New Orleans official weights at \$.82½ per bushel f.o.b. St. Louis. Gaiennie Grain Co. notified plaintiff on August 28 that the car was unloaded, and on August 29 that a stick caught in the scale at the mill where the car was being unloaded, and a certain quantity of oats went through the scale without being weighed. The case, therefore, revolves around the fact that the Gaiennie Grain Co. apparently violated the terms of the contract as the weights of the mill where the carload of oats was weighed are not official weights New Orleans. R. H. Baumgartner & Co. contended that settlement should, therefore, be made on the basis of shipper's sworn weight, substantiated by railroad track scale weights as supervised by the Western Weighing and Inspection Bureau. Gaiennie Grain Co. contended that the shipper's sworn

weight certificate was invalid because it certified to the loading of a greater quantity of oats in the car than physically possible. The car in question has a capacity of 3,805 cubic feet and the shipper's sworn weight substantiated by railroad track scale weights indicated it contained 113,230 pounds of oats or 3,538 bushels and 14 pounds of 36 pound oats.

The committee considered the following evidence in reaching its decision:

1. That the contract between Baumgartner and Gaiennie was violated when official New Orleans weights could not be furnished.
2. That by trade custom, railroad or affidavit weights should then be used if available, and in this case, since the freight was settled on the basis of railroad weights, the committee then chose railroad instead of shipper's affidavit weights as being the weight upon which to make settlement.
3. That, despite the evidence submitted by the defendant that car ACY 3062 could not have contained the 113,230 pounds of oats as determined by the railroad, the Committee determined from reliable sources the "official" unloading weights of the following car of similar test weight oats in cars of similar cubic capacity as listed in the Official Railway Equipment Register. (For purpose of comparison, the first car shown below is the car in arbitration.)

Initial	Car Number	Test Weight	Cubic Capacity	Unloading Weight (R.R. Wts.)
ACY	3062	36-lb.	3805	113230
NYC	162760	36½	3898	114440
L&N	95533	36	3713	113810
N&W	48435	36	3836	114120
N&W	49502	35½	3836	115350

The above evidence has convinced this Committee beyond doubt that car ACY 3062 could have contained the 113,230 pounds of 36-lbs. oats as claimed by the railroad, and that the defendant has failed to substantiate through evidence submitted, that car ACY 3062 did not contain 113,230 pounds as determined by the railroad and, therefore, should make final settlement on the basis of the railroad weights.

The Committee, composed of Mr. Leland C. Miller, Federal North Iowa Grain

Co., Cedar Rapids, Ia. Chairman, A. C. Kock, Breese Grain Co., Breese, Ill. and Mr. Fred Carr, Hallet & Carey Co. Minneapolis, Minn. decided the case in favor of the plaintiff, R. H. Baumgartner & Co., St. Louis, Mo. awarding to the plaintiff, \$869.21, which amount was determined by using the railroad net weight of 113,230 or 3538-14 bushels at 82½¢ St. Louis and \$2919.21 being the value of the contents of car ACY 3062 less the advance draft of \$2050.00. The committee also directed that the costs of the arbitration be paid by the defendant.