

THE GRAIN & FEED DEALERS NATIONAL ASSOCIATION NATIONAL NEWS LETTER

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ARBITRATION REPORT: As required in Section 8 (k) of the Arbitration Rules, your Secretary reports regarding Case No. 1415 between Fraser-Smith Company, Minneapolis, Minnesota, plaintiff and Dannen Mills, Inc., St. Joseph, Missouri, defendant.

On July 11, 1946 the Sioux City office of the plaintiff sold to defendant two cars of 34 pound No. 2 white oats at 91½ cents per bushel, Kansas City, official weights and grades. The confirmation of sale was issued by plaintiff on the same day and under the heading "Time of Shipment" the typed notation appeared as follows "Loaded Car RDG #100 286; Billed to St. Joseph, Missouri." Car RDG 100 286 was shipped on

July 13, 1946 and full settlement was rendered by defendant. The plaintiff did not make shipment of second car immediately because of car shortages which resulted in its suppliers failing to make shipment. Plaintiff did not notify defendant of delay in shipment. On July 30, 1946 defendant by letter asked plaintiff for information regarding delivery of second car of oats on contract. On August 1, 1946 plaintiff shipped defendant car NH 30895 from Sioux City, Iowa, and notified defendant of shipment by telephone. Defendant replied by letter on August 5, 1946 part of which read, "We note you show the price to be 91½ cents basis Kansas City rate; however, both cars were to have been in transit at the time contract was made. Upon arrival we will apply on contract at best possible advantage." On August 10, 1946 defendant notified plaintiff by letter that the best settlement it could make was 10 cents per bushel discount because of delay in filling contract. Plaintiff refused to accept this means of settlement, and through arbitration, sought to bring about acceptance of the second carload of oats as a proper completion of the contract without discount, or with an adjustment in the discount proposed by defendant.

The Arbitration Committee considering the case arrived at an unanimous decision in favor of the defendant, and in substantiation of its decision stated:

(1) Defendant's confirmation dated July 11, 1946 indicated that both cars of oats were sold as "loaded" and required plaintiff to telegraph car number on second car the same day as the contract was made. Under time of shipment appeared the typed word "Today", and under ship appeared the notation "St. Joseph, Missouri, Car RDG 100 286. You to telegraph other car number today." There was no evidence offered that plaintiff complied. Rule 1 of the Trade Rules Governing Transactions in Grain of this National Association provides among other things that both parties include in their original articles of trade "Time of shipment or delivery." Defendant's confirmation of July 11, 1946 complied while plaintiff's confirmation of same date did not.

(2) Written evidence submitted shows that defendant had suggested cancellation of second car but by telephone agreement was made that a car be shipped to apply. Further written evidence reveals that plaintiff did not expect that car to apply without penalty.

(3) Evidence indicates that the 10 cent discount applied by defendant to the car by reason of the failure of plaintiff to ship car as contracted was according to the market at time of receipt.

The plaintiff appealed the decision of the Arbitration Committee claiming that no office of its company received the defendant's confirmation; that time of shipment was not the important issue in this case and Rule 7 should apply, and there was no agreement to allow penalty on the second car.

The Committee on Arbitration Appeals affirmed the decision of the Arbitration Committee finding for the defendant and directing that cost of arbitration be assessed against the plaintiff. The Committee on Arbitration Appeals presents the following reasons for its decision:

1. The evidence indicates that both cars in question were sold as "loaded" and that the defendant was entitled to expect that both cars were in transit on the day the contract was made.
2. Under Rule 7, it was the duty of the plaintiff to notify the defendant when he found that delivery of a car in transit, as of the contract date, could not be made. This the plaintiff failed to do until asked for car number in the defendant's letter of July 30, 1946.
3. After receipt of the defendant's letter of July 30, the plaintiff tendered car NH 30895 in fulfillment of the contract. The evidence indicates that this car was accepted by the defendant with the understanding that they would apply the car on their sales contract to a third party "at best possible advantage." The evidence also indicates that the plaintiff was aware that there was a question of discount involved, as indicated in Mr. Stoelk's letter of August 1 to Mr. Borden of the plaintiff's Minneapolis office.
4. The evidence indicates that the discount of ten cents per bushel taken by the defendant represented the fair difference in value between a car which was in transit on July 11, and a car which was not delivered until early August.