GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

CASE NO. 1439
PLAINTIFF - Milwaukee Feed & Grain Co., Milwaukee, Wisc.
DEFENDANT - Reliance Feed Co., Minneapolis, Minn.

The first committee drawn from the members of The Arbitration Panel to consider this case was composed of Mr. Gunnard Johnson, Wolcott-Lincoln, Inc., Kansas City, Mo., Chairman; Ralph Brown, Early & Daniel Company, Cincinnati, Ohio and Dean Webster, Jr., H. K. Webster Company, Lawrence, Mass. The decision of this committee was appealed by the Defendant, and the decision of The Committee on Arbitration Appeals confirmed the findings of the original Arbitration Committee.

In the months of May and June, 1947, Reliance Feed Company, the Defendant herein, offered through brokers and Milwaukee Feed & Grain Co., the Plaintiff, purchased a total of 1,710 tons, in 57 carlots, of ground corn. Of these various transactions 34 cars containing 1,020 tons are in controversy in this proceeding. The carlot shipments involved may be separated into two classifications, (1) where the dispute concerns the condition of the commodity, and (2) where failure to ship is the point.

The first classification turns upon the construction of the contracts. Plaintiff contends that Defendant guaranteed the arrival of the goods at destination cool and sweet, and this Defendant denies. It was conceded by both parties that the trade rules of this National Association are applicable. In every instance the trades were made by brokers, and both principals and brokers passed confirmations. In no instance did either principal comply with Rule 2(b) of the Feed Rules by notifying the other of differences in the respective confirmations. In some instances Plaintiff's confirmation bore the provision, "Guaranteed to arrive cool and sweet", and these were duly signed by Defendant as being accepted and returned to the Plaintiff. In all other instances the broker's confirmations carried the same provision. Defendant's confirmation in only one instance carried the guarantee.

The original Arbitration Committee held that on the basis of Rule 2(b) it was a condition of the contracts that the commodities arrive at destination cool and sweet. Defendant contended that it was not bound in any event for the condition of the commodities beyond Chicago because the prices were all stated "basis Chicago". The original Arbitration Committee rules that it is well established that the expression "basis Chicago" relates only to the determination of price and does not indicate delivery. When Defendant accepted shipping orders from Plaintiff for shipment beyond Chicago it accepted such destinations as within the contract.

(over)

The Defendant further contends that even if it be held responsible for the condition of the commodities to billed destination, it should not be liable on some cars for the reason that Plaintiff did not promptly report the arrival condition to Defendant and give Defendant an opportunity to negotiate with its seller and the ultimate purchaser to obtain a better allowance. Plaintiff replies that Defendant was properly advised in all instances but relied upon the contention that it was not responsible. Plaintiff furnished evidence to this effect whereas Defendant did not.

The Defendant claimed that Plaintiff has not adequately proven that the settlements made or resales made were the best to be obtained, or that commodities bought in to cover cars and shipped were purchased at the right time or price. But Defendant offered no evidence of proof nor pointed out any improper handling. On the other hand, Plaintiff's evidence is comprehensive in all respects, and therefore, the original Arbitration Committee awards to the Plaintiff the sum of $5,684.49. This amount represents the Plaintiff's loss as a result of a number of cars found to be heating or musty upon arrival, the payment of demurrage in attempting to dispose of out-of-condition cars upon arrival, and the payment of additional brokerage and telephone charges relating to disposal.

The Committee on Arbitration Appeals unanimously concurs in the decision of the original Arbitration Committee in its award to the Plaintiff. The Appeals Committee stated in part in its decision: " The evidence indicates that the two parties were in constant touch with each other in trying to dispose of the rejected cars, and that if the seller could have done any better he was in a position to do so on his own accord. There is no evidence of any contemporary dispute about the disposition of the individual carloads as the troubles arose.

Sept. 14, 1950