

"THE SECRETARY REPORTS—"

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ARBITRATION REPORT--As required in Section 8 (k) of the arbitration rules, your Secretary reports regarding Case No. 1443, Universal Milling Company, Ltd., Los Angeles, California, plaintiff, and B. C. Christopher & Company, Kansas City, Missouri, defendant.

On July 23, 1948, Universal Milling Company, Ltd., purchased a car of corn from B. C. Christopher & Company which car upon arrival at Los Angeles was diverted to the Colton Mill of the plaintiff. The defendant failed to notify the plaintiff that it had already used the two diversion privileges on the car and that there were no further free diversion privileges. Plaintiff when presented with a bill for the freight from Los Angeles to Colton in the amount of \$132.27 paid same and seeks to recover that amount from defendant upon the ground that under Rule 38 of the Grain Trade Rules it was entitled to one free diversion privilege.

The committee considering this case was composed of Phillip Legge, Uniondale, Indiana, Chairman; Ralph H. Brown, Early & Daniel Company, Cincinnati, Ohio; and R. E. Miller, Updike Grain Corporation, Omaha, Nebraska. The committee rendered an unanimous decision in favor of the plaintiff.

According to the evidence submitted by both parties this transaction was a regular transaction in the course of the grain business and there were no special specifications of any kind. Old grain trade rule 43 and new rule 38 specify that the buyer is entitled on each car of grain to one inspection and one transit privilege free from railroad charges.

The defendant failed to advise the plaintiff that it had already used two diversion privileges and that there were no further free diversion privileges. In our opinion, the argument of the defendant that the bill of lading was a warning to plaintiff that such privileges had been used is not convincing as the bill of lading does not show clearly that the car had two previous diversions. The freight bill submitted in evidence by plaintiff clearly shows that the charge of 12¢ per hundredweight, the local rate from Los Angeles to Colton, was made on account of the third inspection and that therefore the plaintiff did not receive its free diversion.

We render a decision in favor of Universal Milling Company, Ltd., for \$132.27 and all charges are to be assessed against the defendant.