

# Arbitration Decisions

July 5, 1951

CASE NO. 1449

PLAINTIFF - LATTIN COMPANY, INC., BUFFALO, NEW YORK  
DEFENDANT - DIXIE MILLS CO., EAST ST. LOUIS, ILL.

The committee drawn from the members of the Arbitration Panel to consider this case was composed of Mr. E.L. Dial, Albers Milling Co., Oakland, California, Chairman; Mr. Dean K. Webster, Jr., H. K. Webster Co., Lawrence, Mass.; Mr. Madison Clement, Clement Grain Co., Waco, Texas.

The majority decision in favor of the defendant, is as follows:

The contract between the parties was for 160 tons of Soybean Meal for September shipment, giving the defendant an optional time limit of September 30 to make shipment. There is nothing in the interchange of telegrams, letters, and telephone calls regarding shipping dates of individual cars to individual destinations which can alter the right of the shipper, the defendant, to take until September 30th to make shipment. The defendant attempted to meet plaintiff's schedule of shipments, and the delay of six days in shipment of one car of Soybean Meal in no way alters the terms of the contract.

There was a minority opinion, briefly, as follows:

A request by buyer and/or seller to change original shipping instructions, is within the rights of either. Not being binding buyer and/or seller can refuse to alter the original contract without penalty if they mutually so desire ..... It is not unusual in the grain trade to request certain changes of shipment. In order to maintain an orderly flow of material it is necessary that shipments often be changed, and where mutually consented to by both the seller and the buyer, shipments should be made accordingly.

This case was appealed to your Arbitration Appeals Committee, which unanimously confirmed the majority decision of the original Arbitration Committee and awarded to the Defendant \$779.40, the amount of the loss, plus \$30.00, in demurrage and brokerage, which amount plaintiff had already agreed to pay.

The expense of the arbitration was assessed against the plaintiff.

It was the unanimous opinion of the Appeals Committee that there was no modification of the contract, nor was any consideration offered by the plaintiff, or received by the defendant, because of the defendant's agreement to ask his supplier to meet the shipping dates requested by the plaintiff.