

Arbitration Decisions

August 10, 1950

CASE NO. 1457

Plaintiff - CEREAL BYPRODUCTS CO., CHICAGO, ILL..

Defendant - STATES GRAIN CORP., NEW YORK, N. Y..

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, Calif., Chairman, Mr. Fred C. Lovitt, L.B. Lovitt and Company, Memphis, Tenn. and Mr. Keith H. Morgan, Jackson Grain Co., Tampa, Fla.

This case concerns the collection of brokerage by the Plaintiff in the handling of the sale of 21 cars of plain dried beet pulp by States Grain Corporation, New York, N.Y., to Wisconsin Products Sales, Inc., Watertown, Wis. Confirmations of this transaction were mailed by Plaintiff and Defendant. Essentially they were the same except for the statement concerning commission earned by the broker. It is evident that there was an apparent meeting of the minds in this transaction, as neither party called to the other's attention this difference concerning the payment of the commission.

The Committee was of the opinion that "Plaintiff and Defendant disregarded the important clauses in their respective contracts of sale and purchase. No written evidence was presented that Plaintiff objected to the Defendant's statement on the face of their confirmation, namely 'We will credit you with commission of one dollar per ton after satisfactory completion of business'. Nor did Defendant object to Plaintiff's statement on the face of their confirmation, namely 'Our brokerage has been earned when our confirmations are received by seller, etc. etc.'"

"It is the unanimous opinion of this Committee that both the Plaintiff and the Defendant had a responsibility to fulfill which they failed to do in writing. Therefore, Plaintiff is awarded, based on 21 cars 17 tons each Beet Pulp or 357 tons at 50¢ per ton, the sum of \$178.50. Any involved costs at your end to be shared equally between Plaintiff and Defendant.

"Written contracts are for the purpose of clarification of verbal understandings and therefore are considered final, providing no written objections within a reasonable time limit are expressed by buyer, seller and/or broker. Without this prescribed policy of the trade, and acknowledged by traders, trading could not be kept within reasonable limits."