GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

Feb. 1, 1951

CASE NO. 1462
PLAINTIFF - PH POSTEL MLG. CO., MASCOUTAH, ILL.
DEFENDENT - GREEN - MISH CO., WASHINGTON, D.C.

The committee drawn from the members of The Arbitration Panel to consider this case was composed of Mr. Ralph H. Brown, Early & Daniel Co., Cincinnati, Ohio, Chairman; Mr. Dwight L. Dannen, Dannen Mills, St. Joseph, Missouri, and Mr. Paul Gebert, Jr., The Lincoln Mill, Merrill, Wisconsin.

This is a case in which the Plaintiff, as shipper, made a contract through a broker for the shipment of a car of 41% Soybean Meal sacked at $87.00 per ton F.O.B. Decatur, on July 28, 1950 for next week's shipment. Shipment therefore should have been made between July 31st and August 5, 1950.

On Monday August 7, 1950 the Defendant (as buyer) wired the Plaintiff asking for car number. Plaintiff contends he started loading the car on August 5. On August 7 Plaintiff replied to Defendants inquiry advising he was loading car IC 12234 on this order. Defendant replied that unless ladings were signed by carrier by August 5, he (the Defendant) would not accept the car.

No evidence is shown in the Exhibits as to when the Plaintiff finished loading Car IC 12234. But on Thursday August 8 Plaintiff bought another car to replace IC 12234, which was NP 9972. Plaintiff notified Defendant of this switch in cars which he stated was waybilled during the period July 31 and August 5. But this was not the case as the substituted car was reconsigned on August 8 but had been in transit since July 29.

We find for the Defendant, because the Plaintiff failed to ship on contract time, first, on the car originally intended to apply on this contract, and second on the car substituted. The Plaintiff knew he was selling Meal at a season when price movements make it important to strictly adhere to specifications of contracts to make deliveries on time. While the rule of diversions makes the original date of shipment the governing date, we feel that the said rule implies that the sellers intent was to fulfill a contract by diversion of goods he then possesses. We do not feel that diversion of cars originally billed on sales by other parties, then purchased and diverted, after the time for shipment has elapsed, constitute bona fide delivery, by a "short" who has failed on a contract.

The Plaintiff received due notice of buyers intention to default on August 7, when Plaintiff received notice that unless the car was actually shipped and Bill of Lading evidence had supported this fact, he (the buyer) would refuse shipment. This complied with the intent of the Rules on the part of the buyer. Plaintiff thereafter took on his own liability of loss when he attempted to substitute another car. Good business practice would have been for the Plaintiff to have had a supplemental agreement with the buyer, with all the facts at hand, to have the substituted car accepted by the buyer.

(over)

Inasmuch as Plaintiff risked the application of the substitute car on his own motion does not necessarily bind the buyer. The Defendant complied with the rules regarding cancellation for default, by his telegram of August 7.

The Plaintiff bases his case on Rule 10 Section B, of the Feed Trade Rules. If the exact wording of this rule were accepted, the Plaintiff might contend that he had a car at Springfield shipped before August 5th which he had the right to reconsign. But he had no such car until he entered the market to "cover" on August 8. Neither the original shipping date nor the date of reconsigning were within the terms of this contract. Therefore we hold that his action does not comply with the intent of the Rule.

Therefore we find for the Defendant and hold the Plaintiff has no case.