GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

May 28, 1952

CASE NO. 1472

PLAINTIFF: BRANDEIS, GOLDSCHMIDT & CO., INC., NEW YORK, N.Y.

DEFENDANT: MAYR'S FEED & SEED, BEAVER DAM, WISC.

Commodity Involved: Soybean Oil Meal

First Part: Question of liability for demurrage.

"The question of liability for demurrage turns on (a) which party was the legal owner of the car at the time the demurrage or other charges were accruing, or (b) Is there another rule or law, rule of trade custom of trade which modified the application of the " legal liability" theory? In this case it is established that Mayr's Feed & Seed (Defendant), shipped the two cars of soybean meal involved in fulfillment of their sale. These cars were shipped, as directed by the Plaintiff. The cars were moved on order-notify bills of lading, under the terms of the contract (as to f.o.b. origin). In the light of the Uniform Sales Act, the cars were moving at the buyers, Brandeis' risk, and under the " legal liability" theory Brandeis would be liable for the demurrage and charges. There is found, however, incorporated into both the purchase and the sales contracts, a reference to the effect that those contracts are subject to the Rules and Regulations of the National Soybean Processor's Assn. Rule 13, Sec. 2 of said association rules reads asfollows: " The seller shall be liable for any demurrage, and/or additional expenses accruing on cars of Soybean Oil Meal billed to 'shippers order', when such expense can be shown to have accrued by reason of the inability of the buyer, through an act of the seller or agent, to get possession of the bill of lading, whenever said bill of lading is necessary to furnish disposition." Since each party agreed by contract to be bound by said association rules, each party clearly is required to accept the consequences of said rules. The association rule and the section quoted herein, therefore, modifies the application of the Uniform Sales Act as to legal liability. In this case, therefore, the seller, by the association rule is required to furnish possession of the bills of lading to the buyer in time for him to furnish disposition of the cars, or, as an alternative the seller must suffer the expense and demurrage occasioned by any such delay. What then, is the correct amount of demurrage and expense chargeable to the seller?Car (a)29835 NP was diverted from Sharon, Pennsylvania to Waverly, New York on October 5, 19--. Five days demurrage had accumulated at Sharon prior to the diversion. Oct. 1 fell on a Sunday, therefore, four days accumulated from Oct. 2 to Oct. 5 inclusive. The first day of demurrage fell on Sept. 30 (Sat.). There was a charge for " non-surrender of order notify b/l before expiration of 24hours", so we assume that the car arrived on Friday Sept. 29. Under the Association Rule 13, Sec. 2, Mayr's should have had b/l oar 29835 NP, in Brandeis hand on that date (Sept. 29) or expect to stand the demurrage and other charges. And on the second car(b) 370076 B&O the b/l should have been in Brandeis possession before noon on Oct. 8, 19-- in order that the car might be released before demurrage. The defendant pleads that there is an absence of negligence or " act of seller" on his part and that Rule 13, Sec. 2 should not apply to him because the delay which caused the bills of lading to reach the Plaintiff on Oct. 8th was beyond his (defendants) control. Defendant further pleads that many trades involve several different principals and that because this is so he (the defendant) should be excused from any liability for delay and that recovery by Plaintiff from Defendant of damages and charges paid by the Plaintiff should be denied. Defendant further reasons that when a bill of lading is not in buyer's hands at the time a car arrives, buyer or consignee should voluntarily deposit a certified check with the railroad company, thereby obtaining the release of the car to said buyer or consignee.

(over)

We cannot refrain from asking why a consignee would voluntarily take such steps as herein suggested by the Defendant for the release of a car, when the seller or consignor is bound by Rule 13, Sec. 2, herein quoted, to bear any expense or demurrage caused by seller's delay in getting the b/l to the buyer or consignee. For by sellers agreement to be bound by that rule he has relieved the buyer or consignee of any liability for demurrage or expense occasioned by such non-release, until directly or through an agent of his (collecting bank), the bills of lading reach the consignee or buyer. If on the other hand, no reference nor agreement to be bound by rule thirteen, section 2 had been made by the parties, the Uniform Sales Act would then have governed and legal ownership and risk of demurrage and expense attached thereto would have fallen on the consignee or buyer. In such case it would then have been to buyers advantage to protect his interests by depositing a check or making bond acceptable to the railroad company to secure the release of said shipment. If, on the other hand, the sale had been made " delivered" and the shipment made on an order-notify bill of lading, the railroad would have been the agent of the seller rather than being the agent of the buyer as in the case of an f.o.b. origin sale, and delivery of the bill of lading to the buyer would have been required before buyer could have received title and possession.

"We have herein cited the rule of law with respect to title and legal liability under the Uniform Sales Act which would govern in absence of a specific contractual provision to cover the matter in dispute. Here contractually the parties provide that Rule 13, Section 2 the applicable rule of the National Soybean Processors' Assn., shall provide a basis for decision for this dispute. We therefore find for the Plaintiff in the amount viz $43.66 on car 29835 NP.

Part 2 - Extension of seller's responsibility:

" On car (c) 370076 B&O Plaintiff argues that he is entitled to " one day to pass documents to the consignee (who apparently was not the same as the buyer, Brandeis) and that the consignee must be allowed two days in which to unload the car regardless of whether the car is on " free time' or demurrage." Plaintiff's argument is not supported by law, rule or custom. It would be an extension of sellers responsibility beyond that of his contractual obligation to the buyer. Unless the seller has consented and has agreed thereto, it would indeed be illogical for the buyer to try to stretch the sellers relationship with the original buyer beyond him thus requiring the seller to take responsibilities to a third party, the buyers buyer. Mayr's (Defendant) furnished b/l to Brandeis on Oct. 10th. The consignee (who apparently was not the same as Brandeis, the buyer) released the car to the carrier on Oct. 13th. Why did not Brandeis require release of the car on Oct. 10th? Mayr's has already allowed $10.30 or 1/3 of the demurrage bill which Brandeis actually paid and said $10.30 covers demurrage of Oct. 10th and 11th. We find for the Defendant on car 370076 B&O.

Part 3 - Irregular or incorrect billing:

The Uniform Sales Act lays down certain rules of law in regard to passage of title and right of buyer to inspect before unloading goods. Car 163848 FCO arrived without the buyer having tags or labels. The bags were untagged, unlabelled and unmarked. The b/l showed that the car contained cottonseed meal instead of 44% protein Soybean Oil Meal as purchased by the Plaintiff. Both purchase and sales contracts provided that the rules of the National Soybean Processors Assn. would govern the transaction. Association Rule 13, Section 1 which stipulates that " loss resulting from irregular or incorrect bills of lading shall be paid by seller", would appear to support the entire claim by Plaintiff on this car, which claim is also backed by the Grain & Feed Dealers Natl. Assn. rules and by regulation 6 of the Official Feed Regulations. Defendant argues that: (a) Consignee was aware that the bags were not tagged, that (b) Consignee should not have permitted bags to be unloaded, that, (c) The fact that the bags were untagged was insufficient cause for refusing delivery, that (d) " tags were mailed immediately upon notification, and the proper number of tags could have been forwarded within a few days", that, (e) by requesting tags consignee " evidenced" willingness to accept the car providing tags were furnished. Here is the question: 1. Was the Plaintiff acting in good faith with the (seller) Defendant in trying to get the car handled without delay? 2. Is the Plaintiff's claim for $112.00 on this car reasonable? A buyer has a right to expect and demand that which he buys. Under the circumstances surrounding this car the buyer could have refused to accept the car until it was sampled as provided in Association rules and its quality and exactness determined by an official laboratory. The buyer could have stood on Rule 13, Sec. 1 and refused payment of the draft. Demurrage for " 7 to 10 days" plus inspection and laboratory analysis might have cost the Defendant a considerable sum. It is no defense for Defendant to claim that the buyer had the burden of accepting an unknown quality of merchandise. Mayr's agreed by wire to send tags immediately. Since tags were not furnished originally could seller at that point dictate how they were to be affixed to bags when they (tags) arrived? Is seller in any position then to complain about labor charges? What about the inconvenience to the buyer, not to mention out-of-pocket expenses, all because bags were unbranded or untagged and the car improperly billed?

" The evidence would indicate that Brandeis went farther than he was compelled to go in trying to help Mayr's out of a difficulty caused either by carelessness of his own or of someone accountable to the Defendant on this car. We find for the Plaintiff on this car F C O 163848 in his claim for $112.00.

" Costs are to be assessed against the Defendant on cars 29835 N P and F C O 163848. Costs to be borne by Plaintiff on car B & O 370076."

Committee names: L.A. Layboum, Simpson, Evans, Layboum Grain Co., Salina, Kans; Henry H. Green, H.H. Green & Son Mill & Elev. Co., Pattonsburg, Mo; Dean Webster, Jr., H.K. Webster Co., Lawrence, Mass.