

Arbitration Decisions

February 18, 1975

ARBITRATION CASE NO. 1515

PLAINTIFF: Tabor & Co., Decatur, Illinois

DEFENDANT: Consolidated Grain & Barge Co., St. Louis, Missouri

The complaint involves corn barge TPC105F applied by Consolidated to Tabor on a sales contract whose delivery basis was CIF NOLA. The buyer, Tabor, gave instructions to the seller, Consolidated, to bill subject barge to Myrtle Grove, La. Consolidated ordered the barge instead to New Orleans, and furnished a validated bill of lading confirming their action, and also requested from Tabor the elevator destination, specifying in said request that the elevator at Myrtle Grove as destination would require acceptance by Tabor of such extra charges as the barge owner required for movement beyond New Orleans to Myrtle Grove. Tabor paid such extra charges under protest, and seeks damages in that amount (\$505.00) from Consolidated.

The dispute in this case basically involves two items:

1. Definition of "rate point," as differentiated from points which share the same rate from a given origin as published in WFB Tariff No. 7.
2. Custom of the trade.

Does a sales contract whose delivery basis is CIF New Orleans require the seller to cause barges applied on said contract to move to any destination that the buyer designates, which has the same rate as New Orleans published in the applicable tariff?

The Committee finds that the seller is not so required. A CIF New Orleans (NOLA) contract requires only that the seller bill the barge, as ordered, to any one of those destinations defined under Item 242-B, Supplement 64 to WFB Tariff No. 7. This definition of "New Orleans Rate Point" places geographical boundaries as follows: Avondale, La., to Stella, La., miles 108.7 to 73.5 on the Mississippi River. Myrtle Grove is located at mile 59.2. The fact that many barge lines, at various times, have in fact agreed to move barges to Myrtle Grove at no penalty to New Orleans has no bearing in this case, for it has been demonstrated just as clearly that extra charges have been assessed for this destination, and in fact the Plaintiff has paid them in many instances.

The evidence of custom of the trade - in this area - the ongoing experience of both grain traders and barge lines - also supports a different status for Myrtle Grove from that of New Orleans. Besides evidence of different rate treatment, it seems generally accepted in the trade that their own purchases or sales do not include Myrtle Grove contractually as an equal destination point in cost, but most likely as a premium destination.

The Committee believes that relevant portions of Paragraph 5, of the Association's Barge Trade Rules, repeated below, adequately cover the specified destination, and "rate point," aspects of this case, and that recognition of the meaning of these rules is demonstrated clearly in practiced trade custom.

"(5) The seller's only obligation with respect to destination on a CIF or delivered sale in sellers' barges is to furnish the buyer a validated bill of lading ordering the barge to the rate point specified in the contract price, but nothing in this rule shall be construed as preventing the buyer from seeking to divert the barge to other than the specified destination."

The Committee, therefore, by unanimous agreement, rules against the Plaintiff, and in favor of the Defendant.

Arbitration Committee of the National Grain and Feed Association, October 18, 1974

/S/ James A. Howard, Chairman
Cargill, Inc.
Minneapolis, Minnesota

/S/ Manuel Blanco
McMillan Company
Minneapolis, Minnesota

/S/ Paul Hughes
Farmers Soybean Corporation
Blytheville, Arkansas

By request of the Plaintiff, the case was appealed to the Arbitration Appeals Committee for an oral hearing. The oral hearing was held in the conference room/library of the National Association on February 12, 1975.

Decision of the Arbitration Appeals Committee

The Arbitration Appeals Committee has carefully weighed the written and subsequent oral presentations made in Arbitration Case No. 1515 and affirms the decision of the National Arbitration Committee. We find that the seller complied with the requirements of the National Grain and Feed Association Barge Trade Rule No. 5.

Arbitration Appeals Committee of the National Grain and Feed Association,

/S/ Fredric Corrigan, Chairman
Peavey Company
Minneapolis, Minnesota

/S/ Charles Holmquist
Holmquist Elevator Co.
Omaha, Nebraska

/S/ Madison Clement
Clement Grain Company
Waco, Texas

/S/ H. V. Nootbaar
H. V. Nootbaar & Company
Pasadena, California

/S/ Henry Fisher (Alternate)
Continental Grain Company
St. Louis, Missouri

February 12, 1975