



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

December 12, 1978

## ARBITRATION CASE NUMBER 1546

Plaintiff: R. F. Cunningham

Defendant: Pillsbury Company

### STATEMENT OF CASE

Cunningham contracted to buy from Pillsbury, soybean screenings, approximately 19 protein, 5.7 fat and 12.1 moisture. Two contracts were involved, each two hoppers 120 tons. The first contract was made on November 18, 1977, for November shipment at \$47.00/ton. The second was made on November 21, 1977, for December shipment at \$50.00/ton. Prices were basis Chicago to come east. Pillsbury shipped two cars in November. These two cars were rejected by Cunningham's customer at Yantic, Connecticut claiming they were not soybean screenings, but some form of a reground product. Cunningham reported this to Pillsbury and confirmed same in writing on December 14, 1977. On December 9, 1977, Pillsbury shipped one car against the December shipment contract. This car was also rejected.

On December 21, 1977, Cunningham wired Pillsbury confirming cancellation of the November contract and also cancelling the December contract due to Pillsbury insistence in shipping more of the reground product. Reference was also made to a refusal by Pillsbury to ship any additional cars to Yantic, Connecticut. The fourth and last car was not shipped to Yantic, but resold by Pillsbury. All writings in support of these facts and contentions were made by Cunningham and were not disputed by Pillsbury in their answer and surrebuttal. Cunningham, in cancelling the contracts, claimed an amount of \$2,400.00 as the difference between the contract prices and the market at the time of cancellation (\$57.00/ton). Pillsbury counter claimed for losses sustained in reselling and extra freight incurred. Losses claimed by Pillsbury covering the first three cars amounted to \$5,695.78. Pillsbury claimed loss on the fourth car amounts to \$1,024.84 which was the difference between the contract price and the resale price. The first question was whether the product shipped was in conformity with that which was contracted. Soybean screenings are recognized to be material cleaned from soybeans consisting of hulls, small or broken (split) soybeans and other foreign material passing through an 8/64 inch sieve. Although evidence submitted indicated most of the product traded is unground, some mills grind the screenings. The contracts did not mention unground screenings. Pillsbury referred to the results of the testing as being 18.1 % protein, 5.6% fat and 13 % moisture (contract specified approximately 19 protein, 5.7 fat and 12.1 moisture). Cunningham did not dispute this in their rebuttal. Pillsbury stated that 1.73 tons of product were removed from the second car at Yantic, Connecticut with an invoice value of \$128.02. Cunningham appeared to concede this amount owing to Pillsbury. The second major question was the respective actions of the parties, specifically in regard to cancellation of the contracts.

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## DECISION

The Committee found for the Plaintiff, R. F. Cunningham. The Committee acknowledged that a question remained as to whether ground soybean screenings were applicable on the contracts. Evidence suggested that an unground product is commonly traded, but this alone does not preclude the applicability of a ground product. The Committee concluded that the respective actions of the parties were the key to resolving the dispute. Cunningham, on December 14 and 21, 1977, in conformance with NGFA rules, did properly notify Pillsbury of the rejection and cancellation. None of the evidence submitted indicated Pillsbury objected to the action taken by Cunningham until January 31, 1978, more than one month later. Pillsbury, in unilaterally reselling the cars, tacitly accepted the rejection/cancellation by Cunningham. The Committee found that in order to substantiate their counter claim, Pillsbury would have had to object or refuse Cunningham's notice of cancellation in a timely manner, not over one month later. NGFA rules provide that if the seller considers the contract to be breached, he is to give notice to the buyer "By wire or telephone confirmed by mail," and thereafter he is permitted to resell the goods in the open market for the buyer's account, with the buyer to reimburse the seller for the loss incurred. Cunningham claimed a market value of \$57.00 Chicago. Pillsbury, in reselling the screenings, realized less than the contract prices of \$47.00 and \$50.00/ton. In absence of any other supporting evidence of market value, the Committee found that Cunningham did not incur any losses in cancellation.

## AWARD

This Committee, after reading the Plaintiff's argument, the Defendant's answer and counter claim, the Plaintiff's rebuttal, and the Defendant's surrebuttal, all of which were submitted to the Committee in writing, found for the Plaintiff, R. F. Cunningham. However, R. F. Cunningham owes Pillsbury \$128.02 for the screenings removed at Yantic, Connecticut.

/s/ Charles Turnquist, Chairman  
The Quaker Oats Company  
Chicago, Illinois

/s/ David Van Vort  
David S. Van Vort, Inc.  
New York, New York

/s/ Edward P. Milbank  
Milbank Mills, Inc.  
Chillicothe, Missouri