



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

ARBITRATION CASE DECISION NUMBER 1529

PLAINTIFF: Fred Webb, Inc., Greenville, North Carolina

DEFENDANT: Sumter Grain Co., Sumter, South Carolina

This case involves a trade between Plaintiff Webb and Defendant Sumter for a 3400 bushel hopper car of No. 2 Soft Red Wheat. The Plaintiff's contract called for first official grades and was dated September 23, 1975. The broker's copy (Crowell Smith Company, Augusta, Georgia) confirmed it as one car, approximately 3400 bushels, of bulk 56 pound or better native "Clear" Wheat. Terms were described as Usual. All parties agreed verbally on the specification - first official grades. Defendant Sumter did not confirm the trade in writing.

On October 2, 1975, Sumter shipped SCL24113 to a Gulf exporter.

Six weeks elapsed before Defendant Sumter requested an accounting on the trade. Upon checking into the matter, Plaintiff Webb found they had not received a grade certificate. They requested same from Defendant Sumter and received a pink certificate on a "Submitted Sample" inspection. The "sample," SC1889 was taken not from the car but from a storage tank at the shipper's facility and graded:

U.S. No. 2 Soft Red Winter Wheat  
Weevily, Dockage 1.5%  
Test Weight 59.0 lbs.  
Moisture 12.9%  
Damage 3.0%  
Foreign Material 0.1%  
Shrunken and Broken Kernels 1.1%  
Total Defects 4.2%

certificate date 10/6/75

The Defendant wants payment basis above factors.

Plaintiff Webb produced a certificate dated 10/11/75. An official sample taken from the car was graded as follows:

U.S. Sample Grade Soft Red Winter Wheat  
Tough, Dockage 1.0%  
Test Weight 57.5 lbs.  
Moisture 13.8%  
Damage 24.2%  
Foreign Material 0.2%  
Shrunken and Broken Kernels 1.0%  
Total Defects 25.4%  
Musty

Plaintiff Webb wants to settle basis above certificate.

The Arbitration Committee has decided the Defendant Sumter erred in not supplying an "official" sample as contracted and that the settlement should be on the basis of the first official inspection; in this case, the outturn inspection.

However, due to the six week time lapse and the Buyers (Plaintiff Webb) neglect in notifying his seller of the official grade as prescribed in Rules 17 which states: "If a car is 'Off Grade' the receiver exercises due diligence in seeing cars are promptly inspected on arrival and to notify their seller promptly on cars that fail to grade." The Arbitration Committee feels that Plaintiff Webb also erred.

Accordingly, the Committee finds in part for Plaintiff Webb and directs the final accounting to be arrived at one half the total discount. i.e., 51 3/4¢ per bushel less 1/2 or 25 7/8¢ per bushel discount on 3276.25 bushels.

Respectfully submitted,

/s/ Gabe Anderson  
Sherley Grain Company  
Bovina, Texas

/s/ Millard Roberts  
FCX, Inc.  
Raleigh, North Carolina

/s/ Herbert F. Koelsch, Chairman  
New England Feed Trading Company  
Braintree, Massachusetts