

Arbitration Case Number 1530

Plaintiff: The Pillsbury Company, St. Louis, Missouri

Defendant: Cook Industries Inc., Memphis, Tennessee

February 8, 1977

Statement of the Case

An oral hearing was conducted to arbitrate this case, which involved the shipment of a barge load of corn from Minneapolis to New Orleans on which an outturn weight shortage occurred.

The Plaintiff, The Pillsbury Company, claimed the Defendant, Cook Industries Inc., owed \$10,131 for the 3,440 bushel weight loss between origin official weights and the unloading at Cook's marine terminal via the "Major Ned" clamshell facility.

Pillsbury sold the loaded barge to Cook under the contractual term of destination official weights. Pillsbury's case focused on Barge Trade Rule 2 of the National Grain and Feed Association -- Official Weights - Barge; which excludes clamshell unloading weights from being considered as official weights: "Grain loaded or unloaded, by clamshell or grain transferred by truck or railroad to the loading barge after weighing in the elevator, or grain weighed after transfer to the elevator by truck or railroad from the barge being unloaded, shall not be considered officially weighed."

Cook Industries Inc. argued that Barge Trade Rule 2 applied only to older, inefficient versions of clamshell unloaders and that the rule's intent should allow the "Major Ned" to provide official weights. Cook Industries Inc. testified that both the State of Louisiana and the Destrehan Board of Trade had certified the weights of "Major Ned" to be Class I - Official. A Destrehan Board of Trade employee, who is a sampler and weighing supervisor, is on board the facility during the entire unloading process performing continuous supervision.

Cook Industries Inc. testified further that hundreds of barges have been unloaded by the "Major Ned" during its three years of op-

erations and because the Board of Trade issued an official weight certificate, most settlements were accepted by the shippers, although they agreed with the Plaintiff about occasional objections over outturn shortages.

The Decision

The arbitration committee unanimously found in favor of the Plaintiff, The Pillsbury Company, agreeing that Barge Trade Rule 2 specifically bars all clamshell unloaders from issuing official weights, and that the Defendant (Cook Industries Inc.) owes the Plaintiff \$10,131.

The committee was impressed with Cook's film presentation indicating this particular clamshell operation (Major Ned) appeared efficient with advanced engineering to provide accurate weights. It is evident that technology of clamshell unloading has markedly improved since the drafting of Barge Trade Rule 2. If trade practices are changing, consideration should be given to update the rules to reflect such changes.

Submitted with the consent and approval of the arbitration committee, whose names are listed below:

Clayton W. Johnson, Chairman
Midstates Terminals Inc., Toledo, Ohio

Paul C. Hughes
Farmers Soybean Corp., Blytheville, Arkansas

W. C. Theis
Simonds-Shields-Theis Grain Company
Kansas City, Missouri

Arbitration Case Number 1530
Decision of Arbitration Appeals Committee

Appellant: Cook Industries Inc., Memphis, Tennessee

Appellee: The Pillsbury Company, St. Louis, Missouri

January 31, 1977

It is our collective opinion that the letter of the rule reigns in regard to Arbitration Case Number 1530.

The provision of Barge Trade Rule 2 is clear in its exclusion of the use of the clamshell for consideration as an official weighing device, and it is our judgment that the rule applies to the shipment in question.

We do not agree that the weighing system utilized by the Minneapolis Grain Exchange has to be proven in this instance, and, therefore, think the origin weight is acceptable for the purpose of this settlement.

We agree with the decision of the arbitration committee and unanimously conclude that the decision be affirmed.

We recommend dissensions with the rules manifest themselves before the fact at the appropriate forums conducted with regularity by the Trade Rules Committee.

H .V. Nootbaar, Chairman
H. V. Nootbaar & Company, Capistrano Beach, California

Madison Clement
Clement Grain Company, Waco, Texas

Charles Holmquist
Holmquist Elevator Company, Omaha, Nebraska

Rupert Quinn
Benson-Quinn Company, Minneapolis, Minnesota

Royce Ramsland
Quaker Oats Company, Chicago, Illinois