



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

August 12, 1982

ARBITRATION CASE NUMBER 1571

Plaintiff: CPC International Trading Corp.,
an Affiliate of CPC International, Inc.

Defendant: I.S. Joseph Company, Inc.

Claim: \$109,453.83, plus interest
as well as any damages done to ACBL Barge 2818

Statement of Case:

Plaintiff requested Defendant to provide export loading and handling services for a barge of pelleted corn gluten feed, on a trial basis, shipped via Garvey International, Inc., Ottawa, Illinois to New Orleans, Louisiana. Upon arrival, although properly notified by Carrier, Defendant, not having had shipping information from Plaintiff, mistakenly assumed Carrier error and ignored delivery notice. More than two months later, Carrier notified Defendant barge contents were heating. Claim covered cost of salvage and apparent product loss.

Points of Contention:

Plaintiff claimed Defendant negligence in failing to enter conversation and letter into records, in ignoring arrival notice, and in failing to make inquiry with respect to the barge.

Defendant claimed Plaintiff negligence in failing to notify of shipment and in failing to follow up on shipment within a reasonable time.

Facts Agreed Upon by Both Parties:

(1) Parties had a contractual relationship whereby Defendant provided transportation, pelleting and logistical services for exporting Plaintiff's corn gluten feed.

(2) Barge in question was outside of this relationship and Defendant agreed to provide logistical services only for it.

(3) Plaintiff requested and received specific instructions to be entered on the bill of lading. Shipper and Carrier followed those instructions.

(4) Barge contents became hot and prompt action was taken by both parties to minimize loss.

Uncorroborated Statements of Plaintiff:

- (1) Defendant was negligent in assuming erroneous notification and in failing to question Carrier at time of notification.
- (2) 483,1155 short tons of corn gluten feed pellets were destroyed.

Uncorroborated Statements of Defendant:

- (1) Defendant instructed Plaintiff to notify Defendant immediately upon loading and give proof of quality.
- (2) Plaintiff failed to notify of loading and provided no proof of quality.
- (3) Defendant had no obligation to advise Carrier of erroneous notification of arrival.

Discussion of Case:

There are two issues and one missing relevant fact.

The first issue clearly was the degree of negligence of Plaintiff in handling a special case. Plaintiff did not forward bill of lading, a normal custom of the trade. Plaintiff made no claim to have notified Defendant of shipment other than in general terms and by inference when requesting bill of lading instructions. Further, simple curiosity should have prompted a follow-up phone call sometime prior to two months elapsed time from shipment.

The second issue clearly was the degree of negligence of Defendant in totally ignoring arrival notice that was in precisely the form requested. Defendant claimed no legal or custom and practice obligation to notify Carrier of apparently erroneous notification of arrival. Such a claim flies in the face of logic. Plaintiff presented statements from the trade that it was the custom of the trade to make such notification. Further, simple curiosity should have prompted a follow-up inquiry about the special case agreement sometime prior to two months elapsed time from agreement.

In assessing the degrees of negligence, it was the opinion of the Arbitration Committee that Defendant carried a major portion because Defendant failed to instruct Plaintiff in writing concerning notification of shipment and proof of quality and additionally failed to notify Plaintiff of the omission of those instructions from Plaintiff's letter of confirmation of the agreement.

Additionally, the assumption of erroneous notification and failure to instruct the Carrier was not customary and was the immediate cause of the loss.

The missing relevant fact was the ultimate disposition of the pellets remaining on Barge 2818. There was evidence that there may have been economic value remaining, but no evidence as to that value.

Both parties used the word "destroyed," but both parties were strangely silent about the disposition of the "destroyed" pellets. It is not conceivable they burned up and the ashes were carried away on the wind.

Based upon evidence provided by Defendant, Plaintiff's 1st Argument Exhibit 6 related the unrefuted fact that 966,231 pounds of damaged material were not transferred and loaded onto M/V Moshill.

Exhibit 10, thereof, established the unrefuted fact that Barge 2818 was placed on 8/11/80 and released on 10/31/80.

Exhibit 11, thereof, was an invoice dated 4/10/81 for towing charges and bore a handwritten note: "Tow to move barge to pier for salvaging heated material. Conti was charterer therefore referred it to us as shipper. RH GDR." There is no further identification.

Defendant's 1st Argument Exhibit 8 established the unrefuted fact that Barge 2818 was shifted to Paulina, Louisiana, and some burnt pellets were removed and transferred to Barge TCB 125 on 10/17/80.

Lemm Affidavit identified the pellets as "salvageable," and they were inferred to have been loaded aboard M/V Moshill.

Exhibit 9, thereof, stated that on 10/25/80 "mixing hot pellets in above barge" occurred. The exhibit provided the committee revealed no barge number and the point to which the barge was shifted for that service is indecipherable. The Lemm Affidavit thereof, identified it as "Mixing of hot pellets remaining on Barge No. 2818.

The questions not answered by the evidence were:

(1) With demurrage accumulating at \$250 per day, six days elapsed between the date of the "mixing" of the pellets and the date of release of the barge. What happened in those six days?

(2) Were the burnt pellets mixed with something and subsequently shipped into export? If so, who was paid for them?

(3) Since the shifting costs for both the transferring and the mixing were billed to and paid by the Defendant, what movement was it that Plaintiff paid on 4/10/81 invoice, and what was Conti interest as charterer?

Three very different conclusions can be inferred from the questions.

First, the pellets remaining in Barge 2818 were mixed with other pellets after 10/17/80, were removed from that barge prior to 10/31/80 and merchandised by Plaintiff.

Second, the same as the first except the pellets were merchandised by the Defendant.

Third, the mixing service merely cooled the remnant, Plaintiff paid to shift the barge to a salvage point and salvager emptied the barge for whatever value might remain.

The Committee found no evidence that bore more heavily toward any one of the above three conclusions. The Committee recognized greatly different economic consequences inure to each. Under the circumstances, the Committee reluctantly concluded it must ignore such economic differences in making its decision.

It was apparent the transaction was outside the terms of the agreement between the two parties concerned. Further, both parties were negligent. Neither the Feed Trade Rules nor the Barge Trade Rules apply fully, since the transaction was one for services only.

While there is some dispute as to the applicable custom of the trade, it was the opinion of the Committee that both parties erred and the guilt must be shared equally.

The Decision:

The damages claimed by the Plaintiff were:

Feed lost - 483.1155 short tons @ \$155.75	\$ 75,245.24
Barge demurrage	16,500.00
A & M fleeting for barge movement	250.00
Ocean freight lost	11,449.83
Difference in gross profit	2,796.04
Loss on export profit	<u>3,212.72</u>

Due Plaintiff \$109,453.83

The damages claimed by Defendant were:

Transferring of pellets	\$ 2,460.00
Mixing hot pellets	2,220.00
Towing	425.00
Less ocean freight erroneously charged	<u>-11,449.83</u>

Due Plaintiff: -\$6,344.83

The Arbitration Committee Found that the profit assumptions are less than certain and therefore rejected them.

Assuming that neither party profited from the final salvaging of the 483.1155 short tons of damaged feed, the Committee found the negligence of the Defendant, a very experienced barge handler, to be equal that of the Plaintiff, who was experimenting with a different form of obtaining export service.

Plaintiff is therefore awarded damages as follows:

<u>Description</u>	<u>Claimed</u>	<u>By</u>	<u>Awarded</u>
Feed lost	\$75,245.24	Plaintiff	\$37,622.62
Demurrage	16,500.00	Plaintiff	8,250.00
A & M fleeting	250.00	Plaintiff	125.00
Ocean freight	11,449.83	Plaintiff	11,449.83
Gross profit	2,796.04	Plaintiff	-0-
Export profit	3,212.72	Plaintiff	-0-
Transferring	2,460.00	Defendant	-1,230.00
Mixing	2,220.00	Defendant	-1,110.00
Towing	425.00	Defendant	<u>- 212.50</u>
		Due Plaintiff	\$54,894.95

Interest was awarded Plaintiff at 18 1/2% which approximates the weighted average of New York prime bank rate from 10/16/80 to 2/1/82 from 10/16/80 to payment of award.

/s/ Donald M. Mennel
The Mennel Milling Co.
Fostoria, Ohio

/s/ Manuel F. Blanco
ConAgra, Inc.
Minneapolis, Minnesota

/s/ Charles E. Wilson
Consolidated Grain
and Barge Co.
St. Louis, Missouri



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August 12, 1982

DECISION OF ARBITRATION APPEALS COMMITTEE

ARBITRATION CASE NUMBER 1571

APPELLANT: I.S. Joseph Company, Inc.

APPELLEE: CPC International, Inc.

The Arbitration Appeals Committee individually and collectively reviewed all evidence in Arbitration Case Number 1571, and reviewed the findings and conclusions of the original Arbitration Committee.

The Committee was unanimous in its affirmation of the decision of the original Arbitration Committee that awarded Plaintiff (CPC International Trading Corp.) \$54,894.95 plus interest at 18 $\frac{1}{2}$ % from October 16, 1980 to payment of the award.

/s/James Donnelly, Chairman
R.F. Cunningham & Co., Inc.
Melville, New York

/s/Charles Holmquist
Holmquist Elevator
Omaha, Nebraska

/s/Clayton W. Johnson
Mid States Terminals, Inc.
Toledo, Ohio

/s/Royce S. Ramsland
Quaker Oats Company
Chicago, Illinois

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