

Arbitration Report:

As required in Section 8 (k) of the Arbitration Rules, your secretary reports regarding Case No. 1404, Kansas Elevator Company, Kansas City, Mo., Plaintiff and the Terrell Milling Company, Terrell, Tex., Defendant. This case involved a contract for four carloads of oats and second contract for four carloads of yellow corn. Both parties acknowledged the existence of these contracts and entered into them in good faith. The dispute arose over the interpretation of the contract, as to whether or not it was subject to a so-called "Escalator Clause" interpretation. Both parties agreed that the commodity in the first contract was bulk white oats, #3 - 30#, OPA scale of premiums or discounts up or down, nothing below #4, 27# to apply; price, OPA ceiling plus markups or market, whichever was higher at time of shipment, plus 1/2% brokerage to the Frank H. Snell Co., brokers.

In view of the fact that the two contracts contained a technical point as well as involving a new and seldom encountered situation, existing conditions at the time, December, 1946, the contracts were made did have serious consideration in passing judgment.

The Arbitration Committee in reaching its decision, pointed out that commodities, grains, millfeeds, proteins, etc., were scarce and all segments of the grain and milling industry were anxious for supplies. Unusual inducements were offered to obtain supplies. As a result, thousands of carloads of grain and grain products were traded in on this "Escalator Clause" basis, and it was agreed by the trade that such contracts were definitely in favor of the seller in that he was guaranteed a price or "floor" as established in the market, either by reason of or an advance in OPA ceilings or in the market in case the OPA ceilings were cancelled. Yet buyers were willing to accept and did accept this interpretation of their contracts in order to obtain supplies. The Committee, therefore, believed that the contents of such a contract were thoroughly understood by all parties concerned.

While the Committee thought that the contracts might be criticized as not being as specific or as detailed as they might be in setting out the meaning of the "Escalator Clause", yet, they did state that the price shall be the OPA ceiling price, or the market, whichever is higher at the time of shipment. If the possibility of a higher market were admitted, then it would follow that the parties to the contract acknowledged the possibility of the OPA act expiring before the grain was shipped. If OPA ceilings were not cancelled, then any market advance, other than a raise in the ceiling price, was impossible and ceiling prices as established by OPA would be the contract.

Therefore, the Committee after carefully weighing the various factors, found in favor of the Plaintiff, the Kansas Elevator Co., and concluded that it was the obligation of the Defendant, the Terrell Milling Co., to reimburse the Plaintiff in the amount of \$308.93, remainder on car of oats UP 307695. Further, to accept on contract all remaining cars of oats and corn involved in this arbitration at the OPA ceiling price plus grade premiums, if any, or grade discounts, if any, plus the legal OPA markups, elevation, merchandising, brokerage, etc., as specified in the contract, or the market, whichever is higher at the time of shipment. The Committee considering this case was composed of Mr. L. E. Howard, Derby Grain Co., Topeka, Kansas, Mr. Ray C. Ayers, Ray C. Ayers & Son, Slaton, Texas, and Mr. W. H. Toberm Toberman Grain Co., St. Louis, Missouri.

Secretary's Comment: This case was unusually important because it set a precedent with regard to escalator clauses in our arbitration system. The case does bring to the fore, one striking fact -- that is, all parties to a contract should thoroughly understand the contents of the contract, particularly any clauses with which they may not be familiar. At the time the contract was drawn, the "Escalator Clause" basis was general and accepted practice, and it was impossible to trade except on such basis.