

Arbitration Report No. 1419:

As required in Section 8 (k) of the Arbitration Rules, your Secretary reports regarding Case No. 1419, Cooperative Mills, Inc., Baltimore, Md., Plaintiff and The W. J. Small Sales Co., Kansas City, Mo., Defendant.

This case arises as the result of several transactions in 17% Dehydrated Alfalfa Meal (100,000 A units) made for scattered shipments May, June, and July, 1947. These purchases by Plaintiff totalling 990 tons--carried the option to purchase from Defendant an equivalent tonnage for shipment from storage November, 1947 to April, 1948, at certain specified prices--subject to acceptance later. The sales were five in number ranging from April 28 to July 10, 1947. The sales prices ranged from \$60.00 Baltimore to \$49.00 Baltimore. The option prices to purchase deferred shipment ranged from \$65.00 Baltimore to \$66.50 Boston. The deadline date for exercising the option to purchase was September 1, 1947, which would make the time limit for acceptance September 2, 1947, as September 1, being Labor Day, was a holiday. This is in accordance with the statement appearing throughout the Feed Trade Rules, "not later than the close of the business day following".

Five letters from Defendant, written on the dates of the five different sales, confirmed the set-a-side tonnage. Three of the five letters confirmed the date for acceptance as by or before September 1st. These covered a total of 600 tons. Two of the letters failed to include this date.

A survey of prices at which Alfalfa Meal was offered for sale during the last ten days in August indicates that the call price was then higher than the market. It was not to Plaintiff's advantage on August 30th to purchase Alfalfa Meal at \$66.00 or \$66.50 Boston. A review of market action in such commodities as are traded in the futures markets, i.e. Wheat, Corn, Oats, Bran-Shorts, shows substantial advances took place the first week in September, e.g. note (close Saturday, August 30, in brackets, compared with close Saturday, September 6) Chicago September Wheat (2.55%) 2.67%, September Corn (244%) 2.51%, September Oats (1.12 1-8) 1.17, Kansas City September Bran (56.75) 59.90, September Shorts (67.65) 72.25. Alfalfa Meal was also sharply higher.

On September 8th, Plaintiff telephoned Defendant attempting to consummate the purchase of 990 tons. Defendant declined to confirm and wired Plaintiff at 1:34 P.M., September 8. Defendant reaffirmed this refusal by wire September 9th at 11:27 A.M., stating in both wires that Plaintiff's option to purchase expired September 1st. At 4:30 P.M., September 9th, Plaintiff phoned Defendant suggesting arbitration before the Grain & Feed Dealers National Association. This was mutually agreed upon--hence this case.

The committee considering this case was composed of A. S. MacDonald, A. S. MacDonald Commission Company, Boston, Mass., Chairman, Walter F. Oesterling, P. J. Oesterling & Son, Inc., Butler, Pa., and L. H. Patten, Farmers & Merchants Mfg. Co., Glencoe, Minn. The amount involved is \$1,126.50 as determined by the Committee.

The Committee rendered a unanimous decision in favor of the Cooperative Mills, Inc. The decision revolved around the application of the provisions of Rule 15 of the Feed Trade Rules to the facts of the case as presented by the respective parties. The Committee ruled that Defendant had no obligation to sell or deliver 600 tons. It carefully examined all the evidence. It conceded that Defendant intended to fix a September 1st date for acceptance on sale of May 16 -- 30 tons and sale of July 10th 360 tons but Defendant did not. It conceded that it is obvious that no unlimited "call" was given. It recognized the fact that Plaintiff took no action to buy in any or all of the tonnage in dispute, to fix or limit the loss and to make a basis for claim for damage. Such action would have been necessary after due notice and within 24 hours after it was made clear by Defendant to Plaintiff that the meal was not confirmed. Plaintiff waived these rights and elected to arbitrate. So no question of present right to delivery exists. The Committee also gave consideration to Defendant's letter of May 19th, to Plaintiff with references to the consummation of sales after September 1.

Therefore, after careful review of all the facts, the Committee unanimously ruled that Plaintiff is entitled to an allowance between the call prices on 390 tons and fair market value -- September 9th or 10th. This value was fixed at \$69.35 Boston or \$68.35 Baltimore and award to Plaintiff as follows: \$3.35 per ton on 30 tons \$100.50 and \$2.85 per ton on 360 tons \$1,026.00 - total \$1,126.50.