THE GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

April 19, 1950.

CASE NO. 1421
Plaintiff - Cokato Mill & Elevator Co., Cokato, Minn.
Defendant - Karr & Company, Columbus, Ohio.

The first committee drawn from the members of The Arbitration Panel to consider this case was composed of Mr. Hugh Hale, Hale Grain Company, Royal, Iowa, Chairman, Mr. E.C.Kessler, Ames-Burns Company, Jamestown, New York and Mr. A.C.Koch, Breese Grain Company, Breese, Illinois. The decision of this committee was appealed and the decision of The Committee on Arbitration Appeals follows:

The understanding between the two parties to this arbitration, at the time the trades were made, was so completely vague and the confirmations, themselves, are so vague and indefinite, it is difficult to determine just what the settlement should be. The case is divided into three parts.

Part No. 1.

Contracts for 16 cars of Special Scratch, including three cars of Cando Scratch and 16 cars of Cando Scratch at $82.00 and $76.50 per ton, respectively, bulk, Boston.

In this claim, Cokato Mill & Elevator Co. is demanding payment for overshipment in connection with cars shipped on estimated weight, with instructions to the railroad to weigh at the first scale. The amount is $2,875.38.

Karr & Company is making counter-claim for $16,809.71, plus interest on account of poor quality, failure to mix scratch, loss due to delay in processing, shrinkage 4%, overshipment of grain priced at delivery time, freight refund and refund due for not a 50/50 mixture.

The original Arbitration Committee awarded $2,875.38 to the Cokato Mill & Elevator Co. on the grounds that Karr should not have paid the draft when weight certificate was not attached and also since bills of lading, attached to invoice, indicated weights were estimated and the railroad was instructed to weigh the cars at the first scale.

We are unable to agree with the decision of the original Arbitration Committee for the following reasons:

The rules covering these transactions are Rule 16, portion of which reads as follows: " It shall be the duty of the seller to mail to the buyer *** an invoice giving the initial and number of car, kind and grade of grain, ACTUAL OR ESTIMATED WEIGHT (STATE WHICH) ", and Rule 23. Portion of Section B of Rule 23, applicable to this case, reads as follows: " On a sale on shipper's weights and grades, it is understood shipments must be made by the seller from his own station or from a station that operates under the same tariff rates, regulatiins and conditiins, and HE MUST FURNISH THE BUYER SWORN CERTIFICATES OF WEIGHTS ATTACHED TO DRAFT OR INVOICE, unless otherwise agreed at the time of sale."

The contracts are completely silent on the subject of weights and grades. It appears from the evidence, however, that this must have been contemplated by the parties because neither Plaintiff nor Defendant argue this point. Assuming that

shippers weights and grades are to apply, one must conclude from the evidence that the shipper made no arrangement whatever for grades and that he was careless to the point of negligence in furnishing weights.

It was the seller's duty to furnish evidence of weights, in accordance with the rules. The rules do not make it the responsibility of the buyer to study bills of lading or other documents. The invoices furnished gave every evidence of being final It is the ancient custom of the trade, when shipments are made on estimated weights, that the shipper does not invoice in full on those estimated weights, but indicates clearly that he is merely drawing an advance against those estimated weights and that final settlement is to follow on a basis of weights to be obtained later in some specified manner.

Karr testified that he did not pick up the bills of lading from the bank, but merely picked up the invoices and reproduced them to apply on the contract with his buyer. It is obvious that had the invoices from Cokato been made properly, Karr would have invoiced his buyer similarly, showing that he was drawing only an advance and that final settlement was to be made later.

The evidence also shows that shipper was extremely indifferent in obtaining weights from the railroad company and these weights were not finally submitted to Karr until three months later and then only through Cokato's attorney.

For these reasons, we do not concur in the original Arbitration Committee's award of $2,875.38 to Cokato Mill & Elevator Co.

There is evidence that some of these shipments, at least, were of extremely poor quality and that some of the shipments were not scratch feed in any sense. There was some question of freight refund, but because of lack of proper evidence, this Committee concurs in the original Arbitration Committee's opinion that Karr's claim for $16,809.71, plus interest, be not allowed.

Part No. 2.

We concur in the opinion of the original Arbitration Committee that the claim of $3,540.00, the amount asked by Karr, under Part No. 2 of this Case No. 1421, be totally disallowed for lack of proper evidence to substantiate the loss.

Part No. 3.

This Committee concurs in full with the original Arbitration Committee's opinion covering Part No. 3 of this Case No. 1421.

This decision awarded $381.00 to Cokato in settlement of counter claims for overcharges on cars.

* * * * *