ARBITRATION REPORT: As required in Section 8 (k) of the Arbitration Rules, your Secretary reports regarding Case No. 1424 between J. T. Gibbons, Inc., New Orleans, Louisiana, plaintiff, and Bates Grain Company, Kansas City, Missouri, defendant.

On January 16, 1948 the plaintiff purchased from defendant's office at Dallas, Texas, three (3) cars of oats at $1.59 per bushel, delivered New Orleans, in a telephone conversation. Plaintiff maintained that defendant represented that the cars were enroute, either the 16th of January or the previous day, from Sioux City, Iowa, and that in view of that fact the cars could be routed via Missouri Pacific Railroad at Omaha or Kansas City. Defendant confirmed sale in writing, plaintiff did not.

The case revolves around the routing of the cars to New Orleans from Sioux City. When plaintiff received cars it was determined that the cars had not been routed via Missouri Pacific. Plaintiff wired defendant that cars had been mis-routed and asked for seven (7) cents per bushel discount on the basis of the additional cost of the oats delivered to New Orleans occasioned by the additional freight charges.

The bills of lading on the cars were signed at Sioux City, Iowa, on January 16, the same day the purchase was concluded, so plaintiff contended defendant had ample time to route the shipment in the manner desired. Actually Actually defendant routed the cars via Fort Worth at which point the Missouri Pacific Railroad Company does not enter. Plaintiff claimed that routing of the cars by defendant were not authorized routes under any tariff.

Defendant allowed correct freight on one car except plaintiff claimed $12.18 reconsignment and demurrage charges. On the other two cars plaintiff asked for $663.85 representing the difference between the freight actually paid and the freight allowed by defendant. Further, plaintiff asked $552.47 for damage sustained by reason of loss in transit tonnage.

Defendant contended that it had fulfilled the contract stating that when plaintiff requested billing via Missouri Pacific, no junction point was named. Therefore, the cars were diverted out of Fort Worth via Missouri Pacific. Further that plaintiff signed and returned sales contract calling for the above routing. Defendant stated that it had fulfilled contract in all respects as supported by evidence submitted.

The Arbitration Committee considering the case rendered a majority and minority decision, and in substantiation of its decisions stated;

Now, therefore, the majority of the committee finds as follows:

Plaintiff was negligent in that, in making this trade over the telephone he did not ascertain exactly how the cars were originally billed, so that they could be re-routed for New Orleans delivery and still retain transit privileges.

Plaintiff was also negligent in that, having made the trade on January 16th, he signed confirmation on January 19th without question.

Defendant was negligent in that, making sale by telephone, he did not ascertain exactly how plaintiff desired cars to run. Furthermore, if cars could not run via the shortest route and retain transit privileges, they should not have just been billed arbitrarily via Forth Worth, Texas, as Fort Worth was not the nearest junction point.

Defendant was also negligent in that, having made the sale on the 16th and telling plaintiff cars were enroute, that he could not get his draft and invoice to New Orleans earlier than January 26th.

These cars were sold at a stated price, delivered New Orleans, (i.e. $1.59 per bushel), and it is up to the defendant to make delivery at that price. Allowance for freight should be at tariff figures, and it is not the fault of the plaintiff that an error was made and that the over-charges for freight and stopovers are not collectable. It is common sense for the plaintiff to assume that cars being enroute from Sioux City could be routed by the shortest route

and at rail rates supported by tariffs, in such a manner that there would be no question as to the correct charges. Routing these cars via Forth Worth is unusual and, apparently, the routing is not in a direct line and over the regular lines which can be supported by the published tariffs.

Conclusion: It is up to the defendant to protect his trade by making delivery of these three (3) cars to New Orleans at $1.59 per bushel, and with correct allowances for freight. No figures are given as to the freight assessed against the third car, 64856 CNW, and the assumption is that the correct freight was assessed and will be paid against this car.

The plaintiff, having been negligent in informing the defendant, in purchasing the cars, that he was expecting them to be routed to retain his local transit, it is a little far-fetched to say afterwards that the fault is all the defendant's and that transit being no good he is entitled to a claim of 7¢ per bushel.

The cost of this case should be equally divided between plaintiff and defendant and, as stated above, it is up to the defendant to reimburse for the freight and other charges on a collectable basis. The plaintiff, on the other hand will have to drop his claim of 7¢ per bushel as it is quite apparent that the plaintiff did not make his desires clear enough in making a telephone purchase, and after cars were delivered to claim the 7¢ penalty on account of his own local conditions.

Now, therefore, the minority of the committee finds as follows:

After having thoroughly reviewed the file in connection with this case and since there is no business on face of the earth, so far as I know, that is done on as high a plane as the grain business, I am going to lose sight of all technicalities involved in making a final decision.

The grain trade, same as all other trades, have their established terms which are thoroughly understood at all times by all seasoned and experienced grain dealers. For instance: we all know exactly what a mixed corn bid of 10 over Chicago-July delivered Kansas City means and nothing but rank novice would not understand exactly the meaning of oats sold enroute delivered New Orleans, M. P. delivery. Bates Grain Co. know thatoutbound billing is just as essential to the successful operation of a processing plant as the power that operates the plant itself and the fact that Gibbons specified M. P. delivery put Bates on notice that he intended using the outbound billing and was a part of the transaction, otherwise; it would have made no difference to Gibbons whether the oats were delivered by M. P., S. P., T. P., truck or ox cart. It was the duty of Bates Grain Co., to accomplish diversion of saidoats at a junction point to where oats would deliver New Orleans on unimpaired billing, or advise J. T. Gibbons that diversion could not be accomplished M. P. delivery account oats having passed junction in line of direct haul and ascertain if a different routing would be satisfactory provided diversion could be accomplished.

Therefore, I find in favor of J. T. Gibbons, Inc., in the full amount as petitioned for in their claim.