

"THE SECRETARY REPORTS"

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ARBITRATION REPORT

As required in Section 8 (k) of the arbitration rules, your Secretary reports regarding Case No. 1431, McVeigh and Company, Inc., Kansas City, Missouri, Plaintiff, and Geo. C. Adams and Company, Kansas City, Missouri, Defendant.

This case concerns the sale, on June 18, 1948, of 1416 bags of seed screenings by Geo. C. Adams and Company to McVeigh and Company. The point of contention revolves around a misunderstanding as to whether the agreed price included the cost of the bags valued at 15c each or a total of \$212.40.

On or about June 16, defendant forwarded to plaintiff a sample envelope of screenings stating the price, test weight and that "bags at 15c and may be returned." Plaintiff telephoned defendant on June 18 and purchased the carload of screenings. Plaintiff claimed that in closing the purchase he stated "The price is \$41.00 sacked basis delivered Holden, Missouri and that it was his understanding that the bags could be returned and a refund made of 15c per sack" However, on the same day defendant mailed plaintiff a sales contract confirming price of \$41.00 sacked basis delivered Holden and with the statement "1416 bags 15c each." Thus the plaintiff believed that the price of \$41.00 included the cost of the bags whereas the defendant by his sales contract indicated that the cost of the bags was an additional charge above the price of \$41.00.

The car was shipped on June 18, and on June 19, defendant presented invoice and lading to plaintiff for payment which was paid after protest as to possible misunderstanding as to the inclusion of the bag cost in the total amount. examination of the sales contract by plaintiff on June 21, caused it to ask for check on recorded telephone conversation of June 18. Said recorded conversation bore out contention of plaintiff that it believed price of screenings agreed on included the bags. Defendant admitted possible error in telephone conversation but contended that in quoting price of \$41.00 per ton it was not intended to include cost of bags. Defendant further offered to cancel the sale and divert the car but plaintiff refused.

The committee considering this case was composed of Mr. Gordon T. Shaw, Seattle, Washington, Chairman; Mr. L. H. Patten, Farmers & Merchants Mfg. Co., Glencoe, Minnesota; and Mr. A. S. MacDonald, A. S. MacDonald Commission Co., Boston, Mass., and the amount involved was \$212.40. A majority and a minority opinion was rendered by the committee, the majority of the committee finding in favor of the defendant. Both opinions will be reviewed.

The majority of the arbitration committee rules in favor of the defendant. A minority report follows.

It is clearly evident that the defendant intended to sell a carload of screenings sacked, but to make an extra charge for the sacks. The extra charge would be refunded if the sacks were returned, freight prepaid. The sample envelope mailed June 16, 1948, stated "Price \$41.00 sacked Kansas City, bags at 15c and may be returned." The quotation including the word sacked indicated only that screenings were sacked and not bulk.

The contract (confirmation of agreement by telephone) issued by the defendant stated in part: "Bags extra @ 15c each and may be returned for full refund." The invoice issued by the defendant contained a charge for the bags @ 15c each.

The plaintiff did not issue a confirmation of any sort. The confirmation of the defendant was not rejected nor amended nor returned unsigned. The invoice was paid as presented by the office of the defendant. We did not place too much emphasis on this payment, as the amount could be adjusted between two reputable firms, but we used it as evidence that all through this trade the defendant, as yet, had no notice of anything wrong.

Two days after all the above and three days after the trade was made the defendant received the first notice that the trade was not in accord with the understanding of the plaintiff. Since there was an honest misunderstanding between the parties it is evident that no trade was actually consummated, there had been no meeting of the minds, and the defendant expressed willingness to cancel the trade and divert the car elsewhere. Such cancellation and diversion would have corrected the situation without harm. However the plaintiff would not agree to such a settlement.

We agree with the minority report which follows that oral or telephone contracts are binding on both parties, but we also find that all the terms and all the conditions of a contract are not always included in an oral or phone conversation, which is one reason the rules of The Grain & Feed Dealers National Association require that written confirmations of such contracts, Rule 2 of the Trade Rules on feed, shall be mailed by each party not later than the close of business the following day. Examination of the written confirmations should bring out whatever discrepancies exist in the understanding of the parties as to what it was they had agreed to.

Failure of the plaintiff to issue a confirmation and failure to reject and return the defendant's confirmation left the plaintiff with small recourse. Failure to accept the defendant's offer to cancel and divert, without harm, since a contract had not been actually made, left the plaintiff without any recourse.

The minority opinion was that an oral or telephone contract is binding upon both parties. Since a record was made and kept by the defendant and which both parties agree that the phone conversation was for screenings @ "\$41.00 per ton sacked basis delivered Holden." This should be the deciding factor and becomes the contract.

It is apparent that the defendant intended it differently and, no doubt, made an error, however, they cannot dispute the fact that the deal was agreed on over the telephone.

I find for the plaintiff, damages of \$212.40.