

ARBITRATION REPORT

As required in Section 8(k) of the arbitration rules, your Secretary reports regarding Case No. 1438, Atlantic Grain Company, Inc., New York, New York, plaintiff, and Sunset Feed & Grain Company, Inc., Buffalo, New York, defendant.

Rule 6, subparagraph (b) and Rule 7 of the Grain Trade Rules form the basis for the decision of the committee on this case. The plaintiff sold a carload of No. 2 corn to defendant through a broker in Buffalo, New York. The broker issued a confirmation of sale which read in part "In transit, shipped from Omaha, August 9th." Defendant issued confirmation of purchase which read in part "In transit." Plaintiff did not question either confirmation.

Two points are presented for determination by the committee. One, is the broker's contract and the terms of same binding on the parties concerned. Second, if the broker's contract is binding did the plaintiff fulfill the terms of the said contract by (a) delivering a car on contract with a bill of lading dated August 12 and (b) if not, did plaintiff fulfill the terms of the said contract by offering a bill of lading dated August 9 at Parkston, South Dakota.

The committee considering this case was composed of Mr. L. E. Howard, Derby Grain Company, Topeka, Kansas, Chairman; Mr. Phillip E. Legge, Uniondale, Indiana; and Mr. H. Robert Diercks, Cargill, Inc., St. Louis, Missouri. The plaintiff asked for recovery from defendant of a loss of \$655.19 in the sale of the car of corn and defendant filed a counter-claim against defendant of 1½ cents per bushel representing loss of profit on the contemplated sale of the corn to a buyer.

The committee rendered an unanimous decision in favor of the defendant. However, the committee did not allow the counter-claim of defendant.

From the evidence presented it appears that the dispute in this case hinges on

whether or not the broker's contract and the terms of the same are binding terms. The plaintiff does not furnish a contract, apparently relying on the broker's contract to define the terms of the transaction. The broker's confirmation, dated Aug. 12, 1948, read, "Now in transit — shipped from Omaha, Nebraska August 9th." Buyer, or defendant's purchase confirmation reads merely "in transit" but the broker's confirmation showing an August 9th shipping date, indicated the car was enroute and specified a certain car. There is no evidence to indicate that the plaintiff questioned the terms specified in the broker's contract, although he had ample time and reason to do so. In this instance, the Grain and Feed Dealers National Association Rule No. 6, subparagraph (b) concerning broker confirmations would apply. It is possible that the plaintiff's actual intention was to apply on contract a car of corn "in transit" and may or may not have expected to fill the contract with a car inspected in Omaha on August 9th. This committee must consider the facts, including the broker's confirmation, and its opinion is that the plaintiff failed to act or challenge the broker's confirmation and secondly failed to furnish a car strictly under the terms of that confirmation. Since this is the case it is our further opinion that it was the defendant's privilege to cancel the contract when he found that shipment of the car of corn had not been made within the contract terms.

The seriousness of this dispute is in the break of 25 cents per bushel in the market price of corn between August 12th and August 19th, and in the interpretation of the contract covering the sale. It is a technical point, but it is our opinion that the loss of \$655.19 suffered by the plaintiff, as a result of the cancellation on the contract by the defendant, is not the liability of the defendant and should not be paid by him.

We don't believe the defendant's counter-claim of 1½ cents per bushel against the plaintiff is valid as that contract is not a part of this dispute. We would not allow that claim.