

Arbitration Decisions

June 29, 1950

CASE NO. 1441

PLAINTIFF - CARGILL, INC., SAN FRANCISCO, CALIF.

DEFENDANT - WILSON & BEEDY, SAN FRANCISCO, CALIF.

The first committee drawn from the members of The Arbitration Panel to consider this case was composed of Mr. E.C.Kessler, Ames-Burns Company, Jamestown, New York, Chairman; A.C.Koch, Breese Grain Company, Breese, Ill.; and W.C.Walker, Walker Grain Company, Ogden, Iowa. The decision of this committee was appealed by the Defendant, and the decision of The Committee on Arbitration Appeals follows:

This case covers sale by the Plaintiff to the Defendant of five cars of No. 2 Yellow, or Mixed, Milo, for July shipment to the Defendant. The contract carried the clause, "Where grain arrives out of condition, it shall be the seller's privilege to dispose of it and to replace it within a reasonable time, if buyer and seller cannot agree on a mutually satisfactory settlement". The amount involved is \$3,260.00.

This dispute revolves around two questions: (1) If replacement becomes necessary, under this replacement clause must replacement be with shipments made within July? (2) What is a reasonable time for replacement? The terms clearly indicate that both buyer and seller contemplated shipment of Milo to destinations remote from Texas.

This committee is of the opinion that the wording of the replacement clause clearly intends that replacement shall be permitted within reasonable time after original shipments have been rejected, regardless of whether that time is within original time limit of the contract.

"As to what is replacement within reasonable time, we are of the opinion that when a contract is written, permitting replacement within reasonable time, a showing must be made that in each particular instance the replacement, as made, was reasonable. In this instance, the determination of what is 'reasonable' isn't even necessary for the reason that the Defendant took a purely arbitrary stand and gave the Plaintiff no opportunity at all to work out a reasonable replacement. The Defendant insisted on July shipment and would discuss no other terms.

This Committee unanimously affirms the award to the Plaintiff of \$3,260.00."