

Arbitration Decisions

June 23, 1950

CASE NO. 1446

PLAINTIFF - HAROLD N. SIMPSON CO., OAK PARK, ILL.

DEFENDENT - I. S. JOSEPH CO., MINNEAPOLIS, MINN.

The first committee drawn from the members of The Arbitration Panel to consider this case was composed of Mr. Leland C. Miller, Federal North Iowa Grain Co., Cedar Rapids, Iowa, Chairman; Mr. E. L. Dial, Albers Milling Co., Oakland, California, and Mr. H. R. Diercks, Cargill, Inc., St. Louis, Mo. The decision of this committee was appealed by the Plaintiff and the decision of The Committee on Arbitration Appeals follows:

"This controversy has to do with the sale by I.S. Joseph Co. to Harold N. Simpson Co., through Ward-Steed Company, brokers, on Oct. 14, 1948 of one 30-ton sacked car of Alfalfa Leaf Meal at \$65.50 per ton, Chicago basis, for shipment from storage during November, seller to provide analysis certificate, attesting to 25.3 percent protein, 16 percent fiber, 230,275 units Vitamin A per pound at time of storage.

"On Nov. 29, 1948, Plaintiff received from Defendant certificate of analysis, dated May 11, 1948, as follows:

"I hereby certify that I have analyzed the sample of Alfalfa Meal

Identification No. 1 Date received 5/7/48

Sample submitted by F. J. Higgins Milling Co.

Address - Schuyler, Nebr.

All the analyses were carried out according to the methods of the Assn. of Official Agricultural Chemists.

The analysis is as follows:

Protein 25.30 percent Ash --

Moisture 6.72 percent Fat --

Fiber 19.86 Percent

Vitamin B2 (Riboflavin) - - - Milligrams per pound

Carotene (Pro-Vitamin A) 138.17

Or (Vitamin A) 230,275 International Units per pound

The above results are reported on an as received moisture basis.

Certification - - -

Remarks - - -

Omaha Grain Exchange Laboratories
by W. R. Urban, Chemist

"Reports that are dependable and a note from the desk of Burton M. Joseph, saying attached is Omaha Grain Exchange Laboratories certificate of analysis covering car of Alfalfa Meal ordered to you -

X Car UP 475390 - Identification No. 1

Protein 25.30 percent

Moisture 6.72 percent

Fiber 19.86 percent

Vit A 230,275

" On Dec. 18, 1948, Plaintiff received car B&O 467047, containing Alfalfa Meal, apparently, at the same time, paid draft to cover. Plaintiff also, on this date, had a sample from this car and forwarded sample to Runyon Laboratories and Merchants Exchange of St. Louis.

" On Dec. 27, 1948, the protein analysis was received by Plaintiff from St. Louis showing protein content of sample, forwarded by them, to be only 20.12 percent. Upon receipt of this report, Plaintiff asked Defendant for disposition for the car and that it be replaced.

" Until Dec. 27, 1948, the date on which the St. Louis analysis was received by Plaintiff, the only disagreement between Plaintiff and Defendant was that Plaintiff stated that it was his understanding that the meal was from current fall production. Defendant did not so understand it and the contract made no provision covering this point.

" From Nov. 29, 1948 to Dec. 18, 1948, Plaintiff took no exception to the fact that analysis certificate, furnished by the Omaha Laboratory, showed the date of the analysis as May 11, 1948.

" Defendant presents evidence on the part of the processor that the sample submitted to the Omaha Grain Exchange Laboratory was the same meal shipped in the car specified, UP 475390; that it was shipped within a few days after the sample was taken to the Coleman warehouse in Omaha for storage. Defendant also presents evidence that the meal shipped in Dec. to Plaintiff was the same meal received in car UP 475390. Whether the sample, sent to the laboratory by the processor, was fully representative we can not know, but we can be sure that the laboratory analysis was correct. We have checked with the assistant chief chemist of Omaha, and he confirms the fact, also confirmed the Plaintiff in this case, that carotene content of Alfalfa Meal does decline materially, particularly when carried through the heat of summer. He says further that he has never done any research in the matter of protein losses in storage, but that he does not think there would be any material loss. This is only his opinion, not supported by research.

" If there was substitution of meal, it was not the fault of Defendant, but must have taken place either in the warehouse or processing plant and they furnished their certification that this was not the case.

" It is held by some members of this Committee, and by the original Arbitration Committee, that I. S. Joseph Company violated their contract by their failure to obtain an analysis of the Alfalfa Meal as of May 20, the date the car was placed in storage. It is the opinion of this Committee that it would be impractical in practice to furnish an analysis of the meal the day a car was placed in storage and that it was not the intent in this instance.

" We are dealing with Alfalfa Meal, whose factors do not change quickly. That is particularly true of its protein content. Sample for analysis must be sent to a laboratory. In this case, one analysis was made in Omaha and the other one in St. Louis. It is the opinion of this Committee that a sample, submitted twelve days before arrival of the car at the warehouse, and analyzed ten days before the car was unloaded, fulfilled the obligation to provide an analysis certificate at time of storage.

" There is quite a clear, supported record of the handling of this car from the original processors to the warehouse of the Plaintiff. But it is also quite evident that a mistake was made in the handling of the meal, or an error was made in the analyses, somewhere along the line, because it is testified that Alfalfa Meal does not lose anything like five percent in protein under the handling this car received.

" The contract does not even attempt to fix responsibility for what might have happened to the car and while Defendant's record of performance is quite clear, it is the opinion of this Committee that the loss in protein, which is figured at \$240.00, should be divided and that Plaintiff should also be awarded \$100.00 for storage, making the total award to the Plaintiff \$220.00."