SPECIAL NEWSLETTER

GRAIN & FEED DEALERS NATIONAL ASSOCIATION

100 MERCHANTS EXCHANGE BUILDING

SAINT LOUIS 2, MISSOURI

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THE SECRETARY REPORTS

Arbitration Report: As required in Section 8 (k) of the Arbitration Rules your Secretary reports regarding Case No. 1447, Felix Meyer & Co., Houston, Texas, plaintiff, and Grain & Feed Mills Co., St. Louis, Missouri, defendant. The Grain & Feed Mills Co. is not a member but requested arbitration which was agreed to by the plaintiff.

The committee considering this case was composed of Cecil C. Blair, Norris Grain Co., Duluth, Minn., Chairman, A. S. MacDonald, A. S. MacDonald Commission Co. Boston, Mass., and E. C. Brunke, Quaker Oats Co., Chicago, Illinois. The committee decided the case in favor of the defendant, with no award, and with the expenses of the case to be borne equally between the plaintiff and defendant. The details of the case follow.

This case arises on a sale by defendant to plaintiff on April 8, 1948, ten cars of sacked ground Canadian refuse screenings, five cars each April and May. The first and only car shipped on contract was billed from St. Louis, April 16 to Fort Worth, Texas and reconsigned to New Braunfels, Texas. On May 3, the Inspector of the Texas Feed Control Service took samples from 35 bags purported to come from the original car shipped, of which there then remained in stock 26 tons. On May 27, the Texas Feed Department reported an analysis far different from the average run of Canadian refuse screenings. At the time the contract was made, no analysis was guaranteed. Defendant was asked to give a tenative analysis so that tags could be printed, and this was done.

On May 27, the analysis was wired to defendant. On May 28 plaintiff wired that the Feed Control Authorities were threatening suit (no proof furnished). On September 14, plaintiff wired that the screenings had been sold for their account. Notwithstanding the fact that on May 28 plaintiff, cancelling the remaining nine cars unordered on contract, the first acknowledgment on the part of defendant of the several wires, which were sent on the average of about once a month, was on September 14. Then defendant stated, by wire, that they had no screenings in Texas to be sold for their account.

The original purchase was for 5 cars April and 5 cars May. No objection had been made as to the quality by consignee at time of arrival nor was there any evidence introduced of complaint by consignee at any time until the final claim was made in September. Notwithstanding all this, no shipping instructions had been furnished on the remaining four cars for April and the five cars sold for May at the time, May 28, at which time the plaintiff cancelled the unordered balance nine cars.

The defendant introduced in evidence the original contract dated July 22, 1946 for fifty cars, against which the original shipment was made on the first car delivered to the plaintiff. In the period between April 8, when the original purchase was made, and September 14, when the sale in disposition was made, prices had been adjusting themselves between old crop scarcity and new crop plenty.

If a contract does not meet with the original specifications and loss has to be established, it must be done according to all rules and practices of trade shortly after arrival. For a buyer to attempt to establish loss and penalize a shipper five months after delivery is ridiculous to the point of absurdity. The claim, as made in September, was for 30 tons, and the evidence shows that on May 3, there were only 26 tons left of the original delivery.

The committee finds for the defendant and rules that no loss has been proven