

Arbitration Decisions

March 8, 1951

CASE NO. 1459

PLAINTIFF - MAGEE GRAIN CO., DYERSBURG, TENN.

DEFENDANT - BUNGE CORP., KANSAS CITY, MO.

The committee drawn from the members of the Arbitration Panel to consider this case was composed of Mr. Henry H. Green, H. H. Green & Son Mill & Elevator Company, Pattonsburg, Mo., Chairman; Mr. H. M. Griffin, International Milling Company, Minneapolis, Minn., and Mr. Harm Peters, Checkerboard Elevator Company, St. Louis, Mo. The decision was unanimous as follows:

This case concerns the sale by the Plaintiff to the Defendant on or about Oct. 8, 1949 of 25,000 bushels of No. 2 Yellow Soybeans. Prior to Nov. 2, 1949 all of the soybeans on the contract had been shipped and received except six cars which were shipped on Nov. 2, 3 and 4. The dispute revolves around the condition of the soybeans contained in two of these cars.

One of the said cars was shipped from Dyersburg on Nov. 2 arriving in New Orleans on Nov. 6. Inspection of this car was not made until Dec. 28. The other car was shipped from Dyersburg on Nov. 4 arriving in New Orleans on Nov. 11. Inspection of this car was not made until Jan. 12.

The Plaintiff contends that the quality of soybeans in the two cars in question were the same as those contained in the other four cars and due to the fact that the said two cars were held on track at New Orleans an abnormal period of time during which time Plaintiff received no notification from Defendant, the lower quality of the soybeans when finally inspected was due to the delay in unloading. The contract provided for the sale of soybeans on the basis of New Orleans official grades and weights. In each instance the soybeans upon inspection were found to be heating and musty. The Plaintiff bases its case on Grain Trade Rule 17.

The Defendant contends that it had absolutely no control over the inspections or time of inspection of above cars at New Orleans, and that any delay in inspection of said cars was due to congestion at the Port of New Orleans and not to any negligence on the part of it.

The committee in arriving at its decision gave consideration to the following points. That although the Plaintiff contended that the soybeans in the six cars all came from the same vicinity and were substantially of the same grade it must be realized that soybeans purchased from neighboring producers can vary greatly. That based upon Grain Trade Rule 17 it was the duty of Defendant to determine the condition and grade of the soybeans upon arrival and in the case of any out-of-condition or off-grade shipments report same to shipper by telephone or wire not later than 12 noon of the next business day after arrival at destination. The Defendant gave no notice, and therefore, forfeited its rights in this regard.

(over)

On the other hand, consideration must be given to the customs prevailing in the New Orleans market relating to inspection which prevented Defendant from obtaining inspection upon arrival, and to the congestion prevailing at New Orleans at the time of the arrival of the cars in question.

Therefore, this committee rules that 60 percent of the difference in the amount represented by the dispute shall be assessed against the Defendant, and 40 percent against the Plaintiff. The cost of this arbitration is to be divided equally between the parties.