THE GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

Nov. 23, 1951

CASE NO. 1460
PLAINTIFF - BRANDEIS, GOLDSCHMIDT & CO., NEW YORK, N.Y.
DEFENDANT - SAUNDERS MILLS, INC., TOLEDO, OHIO

Commodity Involved: Alfalfa Meal

Trade Rule Involved: Feed Trade Rule No. 14

Late Shipment Dispute:
Arbitration Committee decides for the Defendant.

Reasons:

The Plaintiff is not entitled to his claim for loss, amounting to $525.15 plus costs for arbitration for the following reasons: Contracts S-5527 and S-5618 called for shipment of 2 cars of 17% Dehydrated Alfalfa Meal for last half of May, 1950. Cars were subsequently shipped June 2, 1950 although Defendant did not agree with Plaintiff upon an extension of time of shipment of the contract. Reshipment of the two cars on June 2 to apply on these contracts was, therefore, at the Plaintiff's risk and Defendant acted within his rights to refuse them on contract.

It is reasonable that the responsibility for filling a contract on time, or notification of failure to do so, should rest with the seller. We cannot find in the evidence such notice having been given by the seller, and by his failure to do so, we have considered Rule 14-D, paragraph 3 which deprives the Plaintiff of the right to consider Rule 14-G, paragraph 3. We believe the Defendant acted to cancel the contract as was his right under 14-E as soon as he knew the cars were not shipped within contract time.

A counterclaim by the Defendant decided for the Defendant as follows:

Plaintiff wired Defendant on July 13 his refusal to ship the two cars due in July without good and sufficient reasons. No authority can be found in the Feed Trade rules justifying his reasons for attempting to cancel the two cars due on contract P-5527, one car for shipment first half July and one car for last half July, both 30 tons each. We, therefore, believe the measure of damages should be for an amount equaling the difference between the "delivered Boston" market price, as of July 13 (the date Plaintiff wired his refusal to ship both cars) which was $64.25 per ton and the contract price of $54.60 per ton which equals $9.65 per ton. This difference on 60 tons amounts to $579.00 which this committee awards the Defendant, together with the Defendant's actual expenses amounting to $83.22 - a total of $662.23. The Plaintiff also to pay the cost of the arbitration.

APPEALS COMMITTEE DECISION IS AS FOLLOWS:

The Arbitration Appeals Committee unanimously confirms the decision of the original Arbitration Committee in favor of the Defendant, Saunders Mills, Inc. The Committee rules that the Plaintiff was not entitled to his claim for loss, and further ruled in favor of the Defendant in connection with his counter-claim to the extent of $662.23, with the Plaintiff to pay the cost of the arbitration.

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The Plaintiff, Brandeis, Goldschmidt & Co., Inc. has filed appeal based upon six points. The decision of this Committee is based upon the following considerations, discussing some of the above points in order:

First: Lateness and dampness of the season does not excuse a Seller from fulfilling a contract.

Second: Rule 14 (d), paragraph 1 is based on the sound reasoning that it is only the Seller who can know immediately that he has defaulted. In this event, if the seller fails to notify the Buyer of such default, then the Seller has no further rights. The Buyer can cancel at any time.

There is a good deal of confusion about this Rule. While it has been clarified somewhat by the amendment of September 26, 1950, it is still misunderstood by a great many people in the trade. This confusion seems to stem from the fact that after the Seller notified the Buyer of his default by wire or telephone (prior to noon of the day following the date of expiration of the contract), the Buyer then shall, within 24 hours after receipt of such notice, advise the Seller either by wire or telephone as to which of his rights he elects to exercise. It is only after receipt of the Seller's notice of default, and in the event that the Buyer delays beyond 24 hours in declaring his intention as to his rights, that the Seller may continue to make shipments under the contract until he receives such declaration.

Owing to the construction of the Rule, and the order in which the various paragraphs appear, the Rule is quite widely misinterpreted to mean that shipments can continue to be made, even though the Seller has omitted his initial duty of notifying the Buyer that he has defaulted. If the Seller does not give such notice of his default, as required by the Rule, there is then no such 24 hour requirement or any requirement at all placed upon the Buyer; nor does the Buyer have to accept any shipments that are made after the contract period, but can maintain the contract or cancel it at any time, just as he may elect. There is an obligation upon the Buyer, however, to declare his intention as to election of his rights whenever he learns at a subsequent date that the contract is in default. In this case there is no evidence that the Plaintiff notified the Defendant of his default "By wire or telephone prior to noon of the day following the date of expiration of the contract;" that is, by noon on June 1. There is evidence, however, in the Plaintiff's "First Argument" that the Plaintiff was advised on May 31, in a telegram from A.S. MacDonald Commission Company, that the Plaintiff's shipper was experiencing impossible weather conditions; that the shipper had talked to the Defendant explaining the situation; and that the shipper "believes they are agreeable to four day extension."

The Plaintiff wrote to the Defendant on June 1 with reference to such a four-day extension, and received a very emphatic letter to the contrary, dated June 2. The Defendant also notified the Plaintiff by telegram on June 2 of cancellation of contract No. S5527. It is clear from the Exhibits that there was a telephone conversation on June 2 between the Plaintiff and the Defendant. So far as the evidence shows, there was no notice of default given by the Plaintiff or received by the Defendant prior to June 2. It is clear from the Exhibits that the Defendant gave notice of cancellation on the same date.

The Plaintiff attempts, in his Appeal, to stand upon "the Agreement reached between his shipper and the Defendant..." There is no conclusive evidence of such an agreement and, in any case, such an agreement must be between the Plaintiff and the Defendant, rather than some third party.

Third: This point again is a misinterpretation of the Rules in that the Plaintiff seems to think that a Buyer cannot cancel without first giving 24 hours' notice. The 24-hour Rule is simply a time limit within which the Buyer must declare his intention after receiving notice of default from the Seller. The other Arguments of the Plaintiff, under this section, are answered above.

Fourth: This raises rather a difficult question as to applicability of a full page of printed "Conditions" on the back of the Seller's contract form. It should be noted that included

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in these is also the following Condition: "Mill Feeds and other feed stuffs in bags sold subject to the Rules of the Grain & Feed Dealers National Association arbitration on the New York Produce Exchange."

Attention is drawn to the fact that Contract P5527 of April 12 was not written on this form, and did not contain any of these "Conditions." It is the opinion of this member that there was no meeting of the minds between the Plaintiff and Defendant as to all of the terms contained in the fine print on the back of the Plaintiff's contract; and that such "Conditions" were not considered by either party when the contract was made.

Fifth: This statement as to the Preamble of the Constitution and By-laws of the Association is not pertinent to a dispute which has to do only with the question as to which party breached the contract, and a proper interpretation of trading rules.

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