

REGISTRATION DECISIONS

Feb. 15, 1951

CASE NO. 1461

PLAINTIFF - RUSSELL-MILLER MFG. CO. - BUFFALO, N. Y.

DEFENDENT - SULLIVAN & KENNEDY - TORONTO, ONTARIO

The committee from the members of The Arbitration Panel to consider this case was composed of Mr. A.S. MacDonald, MacDonald Commission Company, Boston, Mass., Chairman; Mr. L. R. Bowman, Scott County Mfg. Co., Sikeston, Mo. and Mr. James W. Hogan, Interstate Grain Corp., Omaha, Nebraska. The decision was a majority and minority opinion. Both decisions follow after a review of the case.

This case arises on reshipment from Buffalo to points East of three cars of Rye-out of a total of 67 cars sold by Defendant to Plaintiff during the summer of 1949. On these three cars there was no thru rate applicable from point of origin to destination via Buffalo and the combination of locals resulted in the additional delivered costs which Plaintiff seeks to recover.

It is unfortunate that these three cars were shipped from a point (St. Thomas, Ontario) which by the route moved had no thru rate-but very fortunate that only three cars from a very much larger total were so penalized. It was also fortunate that the Plaintiff's Traffic man had such a meticulous flair for detail. Otherwise it might never have been developed that there was in effect a lower combination of rates than were actually originally assessed which reduced the freight penalty from 10 cents per cwt to 6%. The original loss or penalty figured \$308.75. This figure was voluntarily reduced by Plaintiff to \$200.69-and it is assumed that Plaintiff undertook the burden of collecting thru railroad claim channels the balance from the CPR.

All three contracts against which shipments applied were identical in these important details. They were confirmations of Purchase issued by the Plaintiff. They were all signed and accepted by Defendant. The price was delivered Philadelphia. The weights and grades were specified as "Buffalo Corn Exchange." Buffalo Inspection and weights were Final. The shipping instructions were listed on each purchase contract. Destination - "Buffalo", Route- "Best Possible"

The Plaintiff's purchase contract shows "Rate Point". The word "Philadelphia" did not show in the space following "Rate Point." It was specifically written in after the price.

The intent of the Plaintiff to unload at Buffalo is clear and was definitely so understood by the Defendant. The drafts as shown by the accounts subsequently rendered by Plaintiff were made on a lower basis than the number of bushels invoiced would figure.

(over)

**MAJORITY OPINION** -- We believe that the Defendant should not be required to pay freight charges involved from Buffalo to Philadelphia. It is our interpretation that, though the trade accepts Philadelphia and other points as a basis of trade, it demands that the consignee furnish full shipping instructions. If the consignee desires to restrain the shipper from knowledge as to final destination of the traffic, he is quite within his rights in ordering the cars shipped to an order point, but remains responsible for any charges incurred by furnishing such instructions.

It is our opinion that the buyers instructions: "Ship via best route to us at Buffalo; Buffalo Grain Exchange Weights and Inspection to Apply" is not sufficient billing instructions to require the seller to protect any movement beyond Buffalo.

**MINORITY OPINION** --The Plaintiff could not possibly be expected to know the point of origin of this Rye-nor was it material to them. All that concerned them was that it would move to Buffalo and thence East on the basis of the through route, i.e. the difference between rate prepaid to Buffalo and the rate from origin to Philadelphia (Prepayment 22 cents - Phila. Rate 37½¢- balance 15¢)

It is equally true that Defendant did not know the point to which Plaintiff would eventually ship. It is probably true that the Plaintiff did not at the time of purchase themselves know to what point the Rye would finally go. That is not material either. What is important is that the Defendant in selling "Delivered Philadelphia" and accepting instructions to ship to Buffalo should so ship and Route that their deliveries would cost the Plaintiff only the agreed price. It is apparently true that there was a rate in effect from St. Thomas to Philadelphia via Michigan Central to Buffalo - and I think that somewhere in the voluminous mass of exhibits it is indicated that the Canadian National could also protect the 37½¢ thru route via Buffalo. The cars in question were however not so routed but via CPR TH & B. That again is not material but mentioned in passing.

It is however clear and undisputed that Defendant sold at a price delivered Philadelphia and accepted directions furnished at time contract was made to ship to Buffalo. It is apparent that on about 95% of the shipments made ( 3 cars out of 67) that they so handled their shipments that buyers intent was satisfied.

I therefore find that Plaintiff's claim is justified and order that they be reimbursed in full for their loss \$200.69. I order that the costs of arbitration be divided between Plaintiff and Defendant.