

Arbitration Decisions

Dec. 20, 1951

CASE NO. 1465

PLAINTIFF - THE NEUMOND COMPANY, ST. LOUIS, MO.

DEFENDANT - DANNEN MILLS, ST. JOSEPH, MO.

Commodity Involved: Alfalfa Meal

Trade Rules involved: Feed Trade Rules 1 and 2

This arbitration is in two parts. The first claim has to do with the analysis of the meal shipped in car Wab. 84125, and the second claim involves the question of the color of the alfalfa meal shipped in car Wab. 17288. Amount of the first claim is \$177.50. Amount of the second claim is \$100.00.

This arbitration arose from the fact that neither the Plaintiff nor the Defendant, nor the broker, complied with Feed Trade Rules 1 and 2. There were vital differences in all three confirmations, and no effort was made to reconcile those differences, so that the Appeals Committee can only endeavor to determine what is a fair settlement of these transactions. We have Majority and Minority decisions in these claims.

Claim No. 1

The Majority decision of this committee upholds the Majority decision of the original Arbitration Committee. After a careful analysis of all of the facts in this claim, it is the Majority opinion of the Arbitration Appeals Committee that the destination analysis of the meal, shipped in car, Wab. 84125, should govern. And as the destination analysis showed protein content far under what was guaranteed, the committee awards to the Plaintiff the amount of his claim, \$177.50.

Minority Decision-first claim. "From correspondence reviewed it is clear that the Defendant obeyed the Plaintiff's instructions to ship car Wab. 84125, but only after placing Neumond clearly on notice that the analysis certificate accompanying the documents must be final as to quality. This stipulation seems implied in the contract, because both Neumond's and Ward Steed's confirmations state that Analysis Certificate is to accompany invoice. Neumond was furthermore placed on notice that if Neumond delivered the cars to Saunders Mills and there was a rejection, the cars could not be replaced.

"It is the opinion of this arbitrator that Neumond diverted the car to Saunders Mills at his own risk. It appears possible that Neumond was able to make advantageous sales to Saunders by accepting delivered grades where other shippers refused to sell Saunders on those terms. The evidence shows that Dannen refused to ship to Saunders on those terms for his own account. It seems illogical to expect him to accept Toledo grades when sold through a third party, and when the contract does not so stipulate. It is true there is no evidence to show that the sample which Doty analyzed 'was in any way representative of this car or was even a sample of meal taken out of this car'. It is equally true that 'Doty is recognized in the trade as a reputable laboratory, and its analyses are used generally for contract settlements'. Neumond offers no evidence to give substance to the doubt he expresses about authenticity of the sample. Presumably, Doty was satisfied as to reliability of the sample before issuing their certificate. A laboratory's business reputation is at stake in such matters. Carelessness cannot be assumed without evidence to support it. This Committee has no grounds for such an assumption. On the contrary, this arbitrator's experience leads him to share Dannen's skepticism about the validity of 'door samples'. It is admitted that only 45 bags out of 600 were sampled, and these by a twelve inch bag probe. It is not surprising that the four analyses of the Toledo sample should agree, when all four laboratories were analyzing the same sample.

(over)

" This case hinges upon the question of whether or not Dannen sold on delivered grades as to protein contract; and if so, whether or not he had the right to refuse to accept such grades at a destination when he believed them to be unsatisfactory or unreliable.. It is this arbitrator's decision that the Defendant, Dannen, did not sell on delivered grades as to protein, but on the basis of 'Analysis Certificate with Invoice'. The Plaintiff, Neumond, sold on different terms, or agreed to accept different terms, He did so at his own risk after being explicitly put on notice by Dannen before diverting the car to Saunders Mills: I find for the Defendant, denying the claim of the Plaintiff."

(End Minority Decision - first claim)

Claim No. 2

" This claim is for the loss suffered by the Neumond Company, Plaintiff, resulting from the fact that the Alfalfa Meal shipped in car Wabash 17288 was discounted \$3.00 per ton by the receivers at destination account not being green, but being brown and dirty. The question in this claim is merely as to whether or not 'good green color' was required under the contracts, and if so, whether the meal actually shipped was of good green color.

" The Plaintiff's contract #689-A definitely stipulates good green color in two places. Ward Steed's contract S664 is silent on this point. Ward Steed represented the Defendant, Dannen Mills, as broker in this transaction and admitted in a letter, dated October 19, 1950, that the Defendant had agreed to ship meal 'having good green color'.

" Dannen Mills' contract No. 6331 makes no mention of color. No exception was taken, however, to this specific requirement, in Neumond's confirmation and the Majority decision of this Committee concurs in the Majority decision of the original Arbitration Committee that, under the definition of Alfalfa Meal, it would follow that meal manufactured under those rules would result in producing a good green color.

" It is, therefore, the Majority decision of this Committee, that average good green color was required under the contract and that the supporting evidence substantiates the claim that brown off-color meal was delivered. The dispute was handled promptly and properly by the Plaintiff and it appears that a reasonable and economical adjustment was made with the receiver at a discount of \$3.00 per ton. We, therefore, find for the Plaintiff in this second claim in the amount of \$100.00, with cost to be charged to the Defendant."

COMMITTEE ON ARBITRATION APPEALS

Minority Opinion

" This opinion holds that in the claim, covering car Wabash 17288, neither the seller nor the broker made any stipulation as to color and the effort to introduce the color element was so belated that it is our opinion the dissenting decision of the original Arbitration Committee should be upheld and, therefore, we find for the Defendant, with the cost of the arbitration to be equally shared by Plaintiff and Defendant."