THE GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

March 22, 1951

CASE NO. 1466
PLAINTIFF - HERMAN DAWSON CO., FT. WORTH, TEXAS
DEFENDANT - COLORADO MLG. & ELEV. CO., DENVER, COLO.

This case concerns the purchase by the Defendant on Oct. 6, 1950 through the Bailey Brokerage Company, Denver of 5 cars of No. 2 milo at $2.33½ per hundredweight f.o.b. Longmont, Colorado, scattered Oct. shipment. The point of difference pertained to the understanding between the parties as to the origin of the shipments.

The original transaction was handled by telephone, then immediately confirmed in writing by the Defendant by purchase contract with specific acceptance postal card attached. This contract was dated Oct. 6, and the postal card was signed by an authorized representative of the Plaintiff and mailed from Fort Worth on Oct. 9. The contract specified Texas origin and Texas official grades. The broker's contract also specified Texas official grades. The Plaintiff's written confirmation contract was similar in all respects to Defendant's as to terms except it did not specify Texas origin and official grades.

On Nov. 1 the Defendant wired Plaintiff for car numbers on 5 cars with Texas origin as per contract. On the same date Plaintiff wired Defendant that inasmuch as neither its contract nor broker's contract specified Texas origin, it has filled contract on delivered Longmont basis. Defendant then purchased 5 cars of milo with Texas origin and official grades to replace cars on its contract with Plaintiff.

The Plaintiff claims $1,115.86 against Defendant representing loss in disposal of the 5 cars, and Defendant claims $136.00 as its loss in the replacement of the cars.

This committee bases its decision on Grain Trade Rule 6, Confirmation. In reviewing the evidence furnished by both parties, we believe that both handled the contracts of sale and purchase in line with Rule 6 except for the point of disagreement based on one part of the Defendant's contract and omitted by the Plaintiff on his contract and not questioned by the Plaintiff immediately following the date of sale.

(over)

That point is the origin of the milo. However, in this instance, the Defendant claimed a billing or tonnage advantage in Texas origin grain, and we are aware that such advantages do exist. The Plaintiff's representative accepted the Defendant's contract by signing and returning the card accepting the terms specified. While the broker's contract does not specifically state Texas origin, it does specify Texas official grades which might presuppose Texas origin grain.

Therefore, taking into consideration that the Plaintiff had accepted the terms of the Defendant's contract, we find in favor of the Defendant and award Defendant the amount of his claim, $136.00. The costs of the arbitration are to be charged to the Plaintiff.

The committee drawn from the members of the Arbitration Panel to consider this case was composed of Mr. L. E. Howard, The Derby Grain Co., Topeka, Kansas, Chairman; Mr. H. R. Diercks, Cargill, Inc., St. Louis, Mo., and Mr. James A. Gould, McKee Feed & Grain Co., Muscatine, Iowa. The decision was unanimous.