January 17, 1952

CASE NO. 1467
PLAINTIFF: LATTIN COMPANY, INC
DEFENDANT: JOE SHAFER & SONS

Commodity Involved: Soybean Oil Meal

" This case has to do with the failure of the Defendant Seller to route a car of Soybean Oil Meal in accordance with shipping instructions of the Plaintiff Buyer, with the result that the proportional rate to Boston did not apply and the Plaintiff suffered a loss of $373.58.

" This shipment was made under a contract calling for shipment during first half of September, 1950, the contract being made on August 16, 1950 through Ward-Steed Company, Broker.

" Neither Plaintiff nor Defendant paid much attention to the Trade Rules governing transactions of this kind. The arbitration committees, therefore, act more or less as a court of equity. The original Arbitration Committee ruled in favor of the Defendant on the grounds that shipping instructions were not furnished until September 20 and that the Plaintiff was the negligent party under Rule 9, Section (g) and Rule 11 Section (e).

" It appears that the correct reference to the rules should be Section (d) of Rule 11 in respect to Shipping Directions. It appears, also, that reference should be made to Rule 2, Section (b) which provides that when a trade is made through a broker, the broker's confirmation shall be carefully checked by both parties to the contract and upon finding any difference in specifications 'shall immediately notify the other party to the contract by wire or telephone, and confirm in writing. In default of such notice the contract shall be filled in accordance with the terms of the confirmation issued by the broker.' Reference might also be made to Rule 23 covering Alteration of Contract which reads: 'The specifications of a contract cannot be altered or amended without the expressed consent of both the Buyer and Seller. (This abolishes the custom of 'silence confirms').'

" The majority of this Committee, though individually arriving at conclusions on slightly different grounds, supports the decision of the original Arbitration Committee in favor of the Defendant."

COMMITTEE ON ARBITRATION APPEALS

Minority Opinion

" After going over data in this case, it is very clear that neither Defendant nor Plaintiff took objection to contract in question if shipments were not made during the first half of September and in view of this, I would say the contract automatically remained in force. Furthermore, if Defendant was unable to furnish

(over)

billing routed Pennsylvania Lines via Pittsburgh in accordance with shipping directions, he should have so advised Plaintiff and he, in turn, could, no doubt, have furnished instructions suitable to billing held by Defendant.

"It has been our experience that some contracts are very loosely held by shippers and they do not pay any attention when a certain type of billing is requested by the buyer. We have certain customers who require the milling in transit privilege, therefore, can readily appreciate the Plaintiff's case.

"If Defendant took it upon himself to ship via Wabash-Penn., via Black Rock, in spite of directions furnished by the Plaintiff for all Pennsylvania Lines, would say that he is at fault as he did not exercise caution in the shipment of the two cars in question and Plaintiff is entitled to an award of $373.58."

F. J. Faber, Member
Committee on Arbitration Appeals
Tidewater Grain Co. - Philadelphia, Pa.