

Arbitration Decisions

Nov. 28, 1952

CASE NO. 1476

Plaintiff: TAYLOR GRAIN CO., Newbern, Tenn.

Defendant: CONTINENTAL GRAIN CO., St. Louis, Mo.

Nature of Dispute: Soybean-account sales-overdrafts-discount 1 car heating-non-delivery
3 cars.

" This is an unusual case which has caused your Arbitration Committee-notwithstanding the fact that a majority of the Committee have had many years experience-a great deal of difficulty and required much study. The Plaintiff makes a claim for \$446.50-balance due them on account sales on shipment of four cars of Soybeans and asks to be free of liability for non-delivery of a balance of three cars of Soybeans unshipped on several contracts totalling 15 cars.

" The Defendant-on the other hand-claims a balance due on account of overdrafts for \$649.51-and that nothing is owed to Plaintiff. Defendant further asks damages for breach of contract-non-shipment of three cars-amounting to \$4141.20. It is admittedly unusual that a Defendant feels entitled to ask an award which is almost ten times the figure asked by Plaintiff.

" The case arises from trades in Soybeans made in October 1950-in which Continental Grain 'Defendant' was the buyer and 'Taylor' of Tennessee the seller. We use the name Taylor advisedly for there are two Taylors one-(1) Taylor Grain Co., of Newbern, Tenn., apparently owned and operated by Robert I. Taylor, Jr., and (2) Bob I. Taylor and Co., of Dyersburg, Tenn., and this Bob I. Taylor is the father of Robert I. Jr., who is as Taylor Grain Co., Plaintiff. It is a confusing situation as one could see if they read the cases-or even looked at the bulk of the exhibits without study.

" Strangely enough, Plaintiff's argument bears no date-nor does Defendant's answer and cross claim. However, attached to Defendant's answer is an affidavit certifying to the accuracy of exhibits-sworn to Jan. 17, 1952. Your Chairman of this Committee was asked by wire Jan. 29, 1952 if he would serve as Chairman. It is, therefore, fair to assume that the case came to the Association's office in St. Louis some time late in 1951 or early 52-why this delay-in a matter involving as it does several thousand dollars? It would seem that Continental (now Defendant) first brought suit against Taylor Grain (now Plaintiff) in the U. S. District Court of Memphis. Taylor agreed to arbitrate if suit was withdrawn. This is conceded by Plaintiff in rebuttal (Page 13 first paragraph). It is mentioned here for reasons mentioned later.

" Defendant's claim, \$649.51, is the balance shown on their ledger account headed Taylor Grain Co., Newbern, Tenn., Dyersburg, Tenn. (Defendant's Exhibit 11) Running from Oct. 17, 1950 to December 18, 1951. Two of the Soy items are listed Taylor Grain Dyersburg at 2.26 New Orleans-and there are four items-each showing debit and credits for four cars of Corn. It is a complicated affair-tho nicely gotten up-requiring much time to cross check as some references are by car numbers (without initials) and some by account sales.

" It seems to the Committee that we cannot consider this as we believe the Arbitration arises solely as to dispute on settlement of unpaid balances on four cars Beans shipped. This is complicated by discount on one of the cars of 20¢ per bushel account heating (SCO 133620). Then there is the Counter Claim of Defendant involving unshipped cars (3)-unshipped bushels 4200. We accordingly confine ourselves to claims to be arbitrated, namely Beans, and do not allow the ledger balance.

" We find on the four cars in question as follows:

CAR B&O	266601	Due Taylor Grain	\$393.77
" NYC	101003	Due Taylor Grain	436.50
			830.27
" ILW	46479	Due Continental	28.08
" SCO	133620	Due Continental	355.69
		Balance Due Taylor	\$446.50

(over)

" On the first three items, there is no dispute-the balances listed above show on ledger statement and are admitted by both.

" On the fourth, SCO 133620, the overdraft by Plaintiff which is figured by Defendant at \$629.59 includes a discount of 20¢ per bushel for sample grade (9¢ for moisture, 6¢ for heating and 5¢ for musty). The car was unloaded at New Orleans Nov. 22nd. It was shipped nearly 30 days earlier. The discount figured \$273.90. The Illinois Central paid a claim for this damage for \$95.87- which reduced the loss to \$178.03. A minority of the Committee favored dividing this loss between the two parties. The majority of the Committee, in which your Chairman is found, feel that on a sale made fob shipping point-a seller could not be held accountable for condition resulting from delay in unloading at New Orleans for which the seller was in no way responsible. So we disallowed the discount of \$273.90 which reduced the overdraft on SCO 133620 to \$355.69. In brief, we find for Plaintiff on his claim for \$446.50 in full and we deny Defendant's claim for \$649.51.

" Now on the cross claim of Defendant for \$4141.20 and the rebuttal of Plaintiff please note,-it is definitely clear that on its purchases from the Taylors, Continental (Defendant) did not receive three cars. Plaintiff concedes this (rebuttal Page 14-2nd paragraph and in rebuttal conclusions IV Page 15 last paragraph). The number of bushels has been figured by Defendant as 1400 to the car-according to the rules. This is much less than the average contents of all the cars shipped. This is true in spite of the fact that five of the cars shipped by Quaker Oats on sales to Bob I. Taylor and accounted to by Defendant to Plaintiff were bought in at a price sharply higher than original sales price-and bought as 80 Cap. cars. So Defendant in basing claim for short shipment gives Plaintiff some break in figuring loss basis 4200 bushels.

" This shortage was applied against the highest priced contract, namely, that of Oct. 19, 1950-226 delivered New Orleans. The five cars (Oct. 9-210 fob) five cars (Oct. 11-209 1/4 fob) five cars (Oct. 12-208 fob) two cars (Oct 26-217 1/2 New Orleans) three cars (Oct. 26-217 3/4 New Orleans) were all applied and accounted for. Only two cars were shipped and applied on Oct. 19 (226-New Orleans) and it is on that contract and on that price that the claim is filed.

" Plaintiff rebuttal-supplementary exhibit 1-constitutes a huge mass of exhibits contracts-bills of lading-New Orleans inspection certificates and account sales which show that Continental Grain Co., St. Louis, was trading with Taylor Grain Co.-Newbern, Tenn., in 1949. Plaintiff, rebuttal-supplementary exhibit 2-constitutes an even larger mass of exhibits-contracts-bills of lading, New Orleans inspection certificates, account sales, which show that Continental Grain Co., St. Louis, was trading with Bob I. Taylor of Dyersburg, Tenn., in 1949.

" Plaintiff's rebuttal-supplementary Exhibit 3-shows that ten cars which were shipped on contract-by Quaker Oats-were sold by Quaker to Bob I. Taylor. If this is a valid argument for Plaintiff to advance i their defense-your Committee fails to see it-on the contrary it would seem as tho Plaintiff was arguing in behalf of the Defendant. Of these ten cars-the account sales were rendered to Taylor Grain Co., Newbern on 9 cars as follows. The dates in parenthesis-are dates on which account sales were made out.

MSIL 24408	(11/22/50)	GN 28156	(11/30/50)	Q&O 12750	(12/8/50)
CN 423262	(11/20/50)	GN 24308	(11/30/50)	MCSTL 16305	(12/8/50)
IC 13483	(11/30/50)	MP 47464	(12/7/50)	DLW 43656	(12/8/50)

" Only one car of the ten mentioned was accounted for to Bob I. Taylor Grain Co., of Dyersburg, and the debits for drafts drawn and the credits for outturn weights grades, etc., were all shown on the transcript of ledger account-Defendant's Exhibit 11-headed Taylor Grain Co., Newbern, Tenn., and Dyersburg, Tenn.

" These were apparently satisfactory to Plaintiff at the time. They were all a matter of record before the end of 1950. It was not until afterward-long afterward that the difference between the two companies became an issue. It seems to your Committee-that this has been injected into the case by lawyers-and man terms appearing seem to have a legal ring (fallacy-joinder-irrelevant, etc.).

" So we dismiss the argument as to two separate companies. We find that a shortage of 4200 bushels exists and should be adjusted.

" We feel that it is idle to argue that shipping instructions were not furnished on a contract on which the market was in favor of Defendant- We rule that it was fair for Defendant to feel that request for extension from Nov. 30, 1950 to Dec. 30 was in reality confirmation of agreement discussed by phone.

" Nevertheless, we feel that the whole matter of shipment was loosely and carelessly handled-and the Defendant in his cross claim should not be allowed to benefit to the extent of the advance in price between Nov. 30 and Dec. 30, 1950.

" So we in the belief that Arbitration Committees are in the nature of courts of equity find Plaintiff in default on 4200 bushels sold at 2.26 New Orleans. We find the market as of Nov. 30, 1950 the date on which contract was in default to be 2.81-New Orleans export. Accordingly, we award to Defendant (Continental) on their cross claim 55¢ per bushel or \$2310.00.

" After giving credit to Plaintiff (Taylor) for the claim for \$446.50-we find for the Defendant the net amount due to them to be \$1863.50.

" We further rule that the Arbitration fees-be equally divided between the two parties."

A. S. MacDonald-Chairman
Leland C. Miller-Member
Clark C. King-Member