HE GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

March 11, 1954

ARBITRATION CASE NO. 1481
PLAINTIFF: Northern Supply Co., Amery, Wisc.
DEFENDANT: Wisconsin Milling Co., Menomonie, Wis.
COMMODITY: Pulverized Oats.

This case concerns the sale of 600 sacks Pulverized Oats and whether or not the Plaintiff, the Northern Supply Co., delivered to the Defendant, Wisconsin Milling Co., in car NP 25256 the kind and quality of product sold by him on May 6, 1952.
Comments: The confirmation of the plaintiff reads "Pulverized Mixed Feed Oats", while that of the defendant reads"Pulverized Mill Oats". Mill Oats, as that product was known in the trade, could come under the general classification of "Mixed Feed Oats", as defined by Official U. S. Standards. Thus, taking into consideration the undisputed testimony relative to verbal communication between the parties, there is no conflict between confirmations.
The plaintiff states that the sale was not by sample and indicates in his testimony that the trade was initiated on May 6th; that the defendant(buyer) confirmed and sent check to cover the full amount of the invoice on May 6th; that neither confirmation stipulated "like sample" and that sale was merely by discription over the phone.

The defendant states that the purchase he made was the result of a submitted sample. The evidence submitted indicates that trade was initiated not on May 6th but on May 5th when the defendant requested on the phone a sample of the product of the plaintiff. Plaintiff on May 5th did send him such sample which was received on May 6th and after the sample was received, the trade resulted. Even though confirmations did not stipulate "like sample", the evidence strongly indicated that the trade was based on sample submitted.

The seller shows that the analysis of the product "tested far better than our guarantee". He refers to Protein, Fat and Fiber analysis. The buyer replies that the analysis "is not characteristic of Mill Oats or Mixed Feed Oats" and that the product shipped appeared "to be nothing better than grain screenings". The defendant(buyer) is strongly supported in his contention by his exhibit M, a copy of a letter to Hill City Mills from the State Chemist of Mississippi. (The microscopic analysis made would strongly indicate that the product delivered would not be classified as "Mixed Feed Oats or Mill Oats".).

The fact that Defendant was relying on product to be like sample is further substantiated by Defendants act of paying in full, agreed contract price as well as prepaid freight, upon receipt of sample on May 6th before shipment was actually made from Plaintiff's plant.
QUESTION 2 : Did the seller, having delivered his product, re-assume responsibility for the shipment in question by his later actions in his dealings with the Hill City Mills?

(over)

The Plaintiff states in his Rebuttal "Mr. Pierce(representing the Defendant) saw fit to turn the order bill of lading over to Hill City Mills, with instructions to put the car in store for our account". The plaintiff then, by his negotiations directly with Hill City Mills and his later resale of the product in question, did accept the product "for his account". It does not appear from the testimony that he had any authority to act as agent for the Defendant. Thus any loss (or profit) in the transaction accrued to him.

Based on the evidence submitted, the arbitration committee unanimously agreed to find for the Defendant. The arbitration committee was composed of: Mr. Arthur B. Fruen, Fruen Milling Co., Minneapolis, Minn. (Chairman); Mr. Don E. Wentzel Hales & Hunter Co., Chicago, Ill.; Mr. R. M. Scoular, Scoular-Bishop Grain Co. Omaha, Nebraska.

National Association Arbitration Committee