E GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

March 4, 1954

ARBITRATION CASE No. 1482 COMMODITY: Alfalfa Hay

PLAINTIFF: B.G.Mueller, San Antonio, Texas
DEFENDANT: Sterling H. Nelson, Salt Lake City, Utah

This decision was rendered at the request of both parties, after the National Association Arbitration Committee had suggested that the case be heard by the Arbitration Committee of the National Hay Association; however, since both parties were not members of that association, they agreed to abide by the decision of the National Grain & Feed Dealers Association.

This case arises from controversy over sale of three cars of No.2 green alfalfa hay by the Defendant through Broker Harry F. Frey, Ogden, official grades and railroad weights delivered Kingsville, Texas, to Plaintiff. Contracts were not questioned by either party.

From the evidence submitted, it seemed clear that none of the three cars came up to grade on unloading. The contention by Defendant that hay was sold door-way inspection is not borne out as proven by contracts; the contracts do not mention door-way inspection. A partial Federal Inspection Certificate on Hay covers only that portion of a carload as can be seen by the Inspector in one or both doorways. It is not evidence of the quality of the entire carload.

The Plaintiff has supported by letter and on affidavit his contention that two of the cars in question contained some inferior and also some moldy hay. The Federal Certificate covering "partial" inspection on UP 104832 indicated it to be "U.S. No.3 Green Alfalfa Hay", which was not equal to contract grade. Car RI 262399 graded "U.S.No. 1 extra Green Alfalfa Hay"; however, some of the hay in the car was moldy. Car U.P. 180755 graded "U.S. Green Alfalfa Hay, No. 3" on "partial" inspection, which was not up to contract grade.

There is no evidence in the confirmation of purchase by the Plaintiff or in the confirmation of sale by the Broker, that any discounts or premiums would apply if hay was not of contract grade. Such terms are not recognized trade rules...or in use by the hay industry at large unless so designated in the contract. Contention by the Defendant that payment of drafts was final settlement is erroneous. The Defendant was negligent for not attaching Federal Grades Certificates to the Drafts and Bills of Ladings. Plaintiff has no knowledge of the quality of the hay when the Drafts were paid. Some certificates were never delivered to him.

In the opinion of the committee of the Grain and Feed Dealers National Association, sufficient evidence has been produced to show that inferior hay was shipped in each car; That Defendant's contentions are not properly supported. The Plaintiff has given proper evidence supporting his claim of actual loss. However, the Plaintiff has not shown anything in his claim substantiating the cost of the telephone calls, and therefore, his claim for $20.00 on telephone calls should not be allowed, nor should he be allowed the amount of $60.48 profit, which is a part of his claim.

"It is the decision of this committee to find for the Plaintiff, B.G.Mueller, in the amount of $284.77. The cost of the arbitration, if any, shall be borne by the Defendant, Sterling H. Nelson".

The arbitration panel deciding this case was: Walter H. Toberman, Toberman Grain Co., St.Louis, chairman; L.S. Fisher, Fisher Grain Co., Inc, Woodward, Okla; R.E. Miller, Updike Grain Corp., Omaha, Nebraska. The decision was unanimous and the case was not appealed.