

July 5, 1962

ARBITRATION CASE NO. 1498

Plaintiff:* Sterling H. Nelson & Sons, Inc. Salt Lake City, Utah
Defendant: Continental Grain Company, Portland, Oregon

The decision of the Arbitration Committee was for the Plaintiff. The Defendant filed an appeal. The Arbitration Appeals Committee unanimously affirmed the decision of the Arbitration Committee.

Presented below are pertinent excerpts from the Arbitration Committee's nine-page decision** as a report to the membership, required by Section 8(1) of the Arbitration Rules:

"This dispute between the parties arises from a series of trades in wheat sold by the Complainant Nelson to the Defendant Continental in February and March, 1961, for delivery by truck to Longview, or to its elevators at Longview or Pasco, Washington, or to Portland, Oregon, at the seller's option. Nelson and Continental had done business with each other for many years. Terms of settlement were on unloading elevator (terminal) official weights and grades which at Longview are supervised by the State Of Washington. All grain involved in this dispute was delivered by truck to Continental's terminal elevator at Longview, Washington. Grain to fill the contracts between Continental and Nelson from one Victor D. Wright, who operated at times as a contract hauler and at other times as a "trucker-merchant".

"Nelson's relationship with Victor D. Wright was that of one principal to another with Wright as a "trucker-merchant". From time to time in February and March 1961, Nelson purchased from Wright truckloads of wheat for delivery to Continental's terminal elevator for the account of Nelson. Settlement between Nelson and Wright was to be made in two stages. The first called for a 90% of value payment to Wright by Nelson based on a receiving weight report issued by Continental's employees on Continental's own form at the time of delivery of the grain by truck for the account of Nelson at Continental's elevator at Longview, Washington. The balance was to be paid upon receipt from Continental of Official Weight and Grade Certificates issued by the Grain Division of the State of Washington at Longview.

"Forty-two truckloads were delivered by Wright for the account of Nelson at Continental's elevator at Longview, Washington, during the month of February, 1961. An additional 35 truckloads were delivered between March 1, 1961 and March 20, 1961. No question was raised at the time of settlement as to weights or weighing by either Nelson or Continental. Settlement between Continental and Nelson was made in the usual course of business and as provided for under the terms of sale and purchase on these 77 truckloads. On March 27, 1961, the Wright truckers were apprehended manipulating the truck receiving scale at the Longview elevator. On that date, Continental

issued stop-payment orders on two checks previously issued to Nelson totaling \$23,872.37, which covered 12 truckloads delivered to Longview (six loads on March 17, 1961, and six loads on March 20, 1961), and two truckloads delivered to Portland on March 16, 1961 (the two loads delivered to Portland are not involved in this dispute)."

"...Nelson asks an award of \$49,298.20, with interest from April 1, 1961. Continental denies liability for payment of Nelson's claim and asks instead an award to it of \$37,853.06, with interest from April 1, 1961.

"It is the opinion of the arbitration committee that the case hinges on two basic questions which must be considered together:

1. Whether or not the official weight documents can and should be set aside, and if so what different method to establish weights should properly be substituted when later it is discovered that the official scales have been fraudently manipulated by a third party so as to cause false weights to be officially recorded; and

2. Which, if either, of the parties may be judged at fault in permitting the false record of official weights to be established when evidence indicated that each is an innocent victim of the dishonest act of the third party."

"We find that:

(1) Continental has failed to show successfully that the Official Weight Certificates should be set aside and other weights accepted on the contents of those truckloads of wheat which it received from Wright for the account of Nelson between February 1, 1961, and March 20, 1961. It has moreover failed to show that it exercised due care in supervising the operation of its scales. Therefore, the committee holds the Official Weight Certificates as a basis of settlement on the contents of the first 77 truckloads received from Nelson by Continental shall prevail; and

(2) Continental has shown evidence that on truckloads of wheat received on March 22 and March 24, 1961, the Official Weight Certificates as issued on the contents of each of the 12 truckloads received on these dates are for amounts in total which are materially more than the total weight of the contents of the truckloads received on each of those dates. Here Continental exercised due care and took swift and timely action. By its action of reweighing under supervision of its elevator superintendent, whose affidavit of such weighing was not successfully challenged by Nelson's evidence and testimony, Continental has shown that the official certificates of weight are in total incorrect. The committee agrees that Continental might have taken steps to bring about a correction of the official weight certificates issued on each of the 12 truckloads delivered on the dates of March 22 and March 24, 1961, by requesting the Washington State Grain Division supervisor at Longview to issue an Official Weight Certificate for the commingled lot of the contents of the six truckloads on each date. However, in view of the fraud by scale manipulation in which the Wright truckers were caught on March 27, 1961, and to which they subsequently confessed and were tried and convicted, an error of fact became positively known and this committee cannot fail to recognize this evidence and testimony of Continental with respect to its weights recorded through its hopper scales as being a proper basis for which settlement should be made by Continental to Nelson for the contents of the 12 truckloads received by Continental from Wright for the account of Nelson on March 22 and 24, 1961. This committee holds that the official weight certificates which

(more)

were issued on the contents of the said 12 truckloads are erroneous and it hereby acts aside the official weight certificates as a basis for settlement between the parties and instead holds that settlement for the said 12 truckloads shall be the commingled lot affidavit weight of the contents of the six truckloads on each date.

(3) Nelson has according to his evidence accumulated a profit of \$2,034.05 on his transaction with Wright and Continental. Since there is no evidence of fraud on the part of Continental or Nelson and since Wright, a third party, has been convicted of perpetrating a fraud, therefore this committee holds that it is only proper and right that Nelson should not prosper to the extent of his admitted profit on the transaction. It is held that Nelson's profit shall be deducted from that part of the award from Continental to Nelson on the 77 truckloads of grain received by Continental between February 1, 1961 and March 20, 1961.

"Continental is hereby directed to pay to Nelson \$34,771.66 plus \$1,857.66 interest, a total of \$36,629.32 in full settlement of Nelson's claim in this case. Continental's Cross Bill is hereby denied. Costs of arbitration shall be divided equally between parties."

Arbitration Committee of the
Grain & Feed Dealers National Association

/S/ R. M. Scoular
R. M. Scoular

/S/ Gordon T. Shaw
Gordon T. Shaw

/S/ L. A. Laybourn
L. A. Laybourn
Chairman

* Procedures: Both parties to the dispute submitted all written evidence as required under Sec. 6 of the Arbitration Rules. A request for an oral hearing was made and same was held as provided for in Sec. 8 of the Arbitration Rules. The oral hearing was conducted in Denver, Colorado, on December 18 and 19, 1961, before the three-man Arbitration Committee, and both parties were represented by legal counsel. All written evidence and the copies of the 287-page official transcript of the oral hearing were sent to the members of the Arbitration Committee, and to the Arbitration Appeals Committee.

** and the Arbitration Appeals Committee decision in toto.

Decision of the Arbitration Appeals Committee

of the

Grain and Feed Dealers National Association

Arbitration Case No. 1498

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Sterling H. Nelson & Sons, Inc.
Salt Lake City, Utah
Complainant

VS

Continental Grain Company
Portland, Oregon
Respondent

The decision of the Arbitration Committee of the Grain and Feed Dealers National Association dated February 19, 1962, was appealed to this Committee by the respondent.

The Arbitration Committee, after consideration of the written evidence and an oral hearing, awarded the complainant \$36,629.32.

The Arbitration Appeals Committee, after careful study of the transcript of the oral hearing, and all papers and material filed by both parties to the case, unanimously affirms the decision of the Arbitration Committee.

COMMITTEE ON ARBITRATION APPEALS

/S/ W. B. Fox Member

/S/ R. E. Barinowski Member

/S/ B. O. Holmquist Member

May 9, 1962.

/S/ R. F. Cunningham Member

/S/ E. B. Evans Chairman