

Arbitration Decisions

ARBITRATION CASE NO. 1507

PLAINTIFF: Texas Farm Products Company

DEFENDANT: Topeka Mill & Elevator Company

A National Arbitration Committee considered the case and rendered the following decision in favor of the Plaintiff. (Dated March 31, 1970)

This dispute involves application of billing against a sale of grain made by the Defendant to the Plaintiff. The Plaintiff seeks redress under Rule 38, Grain Trade Rules of the Grain and Feed Dealers National Association.

The Plaintiff in this case was the buyer; the Defendant the seller; both Plaintiff and Defendant are Association members.

The decision of the Arbitration Committee was for the Plaintiff and established an award to the Plaintiff in the amount of damages claimed (to wit \$10,912.00). The decision of the Committee involved the following considerations:

1. Rule 38 states that "Buyer is also entitled on each car of grain to one transit privilege (storage or processing) via the route available from sellers point of origin, in accordance with the Tariff in effect, to the buyer's billed destination". "On non-transit contracts this rule does not apply".
2. The Defendant's confirmation of sale specifies "Group II, Texas". No evidence was submitted of the Plaintiff's confirmation of purchase.
3. A Tariff existed which would allow the provisions of Rule 38 to be met. Grain rated inbound by that Tariff would have balanced out of the transit point without penalty to the Plaintiff's billed destinations.
4. The Defendant's confirmation of sale makes no mention of "non-transit" or "shrink"; only "Group II, Texas".
5. While trade practices in the Kansas City area may differ in accepted meaning of terminology "Group II, Texas" from the practices in Texas, this does not relieve the seller from complying with Rule 38, unless so specified in writing.
6. Defendant makes no direct reference to Rule 6 violation by the Plaintiff, so no consideration need be given to its provisions in the case in question. Consideration only with regards to the provisions of Rule 38 appears relevant.

It is the unanimous opinion of the Committee that the Defendant failed to comply with Rule 38; that none of the terminology in his confirmation of sale waived the provision of Rule 38; nor did his confirmation specify "non-transit".

Allegation contained in the testimony as to understanding established between buyer and seller by verbal exchange cannot be given the weight of evidence in the Committee's opinion.

We have, therefore, voted in favor of the Plaintiff, Texas Farm Products Company, and vote to award the Plaintiff his claimed damages (\$10,912.00).

Arbitration Committee of the
Grain and Feed Dealers National Association

/S/ James R. Lepine
/S/ Paul R. Daley
/S/ Del G. Ellis

Actions subsequent to the decision of the Arbitration Committee of the National
Grain and Feed Association

The decision rendered by the National Arbitration Committee was appealed by Topeka Mill and Elevator Company, Defendant.

The National Arbitration Appeals Committee unanimously voted to remand the case to the National Arbitration Committee for reconsideration. (Dated July 15, 1970)

The National Arbitration Committee reaffirmed the original findings in favor of the Plaintiff. (Dated September 21, 1970)

The National Arbitration Appeals Committee affirmed the decision of the National Arbitration Committee, but modified the award based upon the Plaintiff's ability to demonstrate proff of loss.

The decision of the Arbitration Appeals Committee of the National Grain and Feed Association follows: (Dated April 2, 1971)

Topeka Mill and Elevator Co. Appellant (Original Defendant)

vs.

Texas Farm Products Company Appellee (Original Plaintiff)

The Arbitration Appeals Committee of the National Grain and Feed Association, has considered the decision of the National Arbitration Committee in the above captioned case.

The Appeals Committee agreed with the National Committee decision that Topeka Mill did not comply with trade rule #38, but could not agree with the committee's award of damages.

Topeka Mill could have saved himself by confirming "non transit" billing. Texas Farm Products was at fault for not sending any confirmation (Rule 6) and particularly when they expected transit tonnage at a time when trading was, and had for some time been regularly conducted in "shrink" or "non transit" billing, as well as proportional billing.

Texas can further be faulted for not furnishing proff of loss with his original arbitration documents.

Upon inquiry, the Association's Legal Council advised our committee that requiring Texas to furnish proff of loss would not be considered "new evidence" under Association rules, so proff was requested.

Of 104 cars involved in this arbitration, documents were furnished on 42 cars shipped by Topeka Mill. Tonnage involved on each inbound car was traced to outbound feed shipments.

Based on evidence submitted, decisions of the Arbitration Committee, audit of freight bills and Western Weighing Bureau records submitted and certified to by Texas Farm Products, the Appeals Committee of the National Grain and Feed Association, by unanimous vote finds as follows:

1. Affirms the decision of the National Arbitration Committee, that Topeka Mill, in filling his contracts to Texas, did not comply with requirements of Trade Rule #38.
2. Determined that charges lawfully collected by the outbound rail carriers (stipulated by Rule #38) amounted to \$4,804.33.
3. Directs that Topeka Mill pay to Texas Farm Products \$4,804.33 as liquidated damages.

/S/ R. M. Scoular, Chairman

/S/ H. V. Nootbaar

/S/ Madison Clement

/S/ W. B. Fox

/S/ Sam Rice