



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

October 4, 1977

Arbitration Case Number 1532

PLAINTIFF: Triple "F" Feeds

DEFENDANT: Cook Industries Inc.

The Arbitration Committee has determined in Arbitration Case #1532 that:

1. Exhibit A attached to First Argument of Plaintiff was the confirmation of the agreement for the Plaintiff to buy and the Defendant to sell 12 barges of soybean screenings, one barge a month, November 1974 through October 1975; such document being acknowledged by both parties affixing their signatures thereto and, therefore, constituting a contract or a letter (hereinafter referred to as "letter agreement") of agreement. Any contracts executed or letters, wires, etc., exchanged between the parties subsequent to the letter agreement (Exhibit A) were subject to the terms and provisions of such letter agreement.

2. The letter agreement was still open for deliveries until August 8, 1975, when the Defendant notified the Plaintiff that no more shipments would be made. Shipments which should have been made during the months of February 1975, March 1975 and April 1975 were deferred by the Defendant reporting to the Plaintiff that no shipments would be made during said months and the Plaintiff agreeing to the non-shipment during said months. It was brought out and agreed in oral testimony that the schedule of one barge per month was not a firm fixed schedule, but subject to give and take on both sides. No mention was made or confirmed in writing by either party that such shipments were cancelled and would not be shipped at a subsequent date. Defendant notified Plaintiff by wire that no shipment would be made in June. No information was exchanged between the parties on barges due for August 1975, September 1975 or October 1975, except the notice on August 8, 1975, by Defendant to Plaintiff that no more shipments would be made.

It is the decision of the Arbitration Committee that there were seven (7) barge loads of soybean screenings open for delivery under the letter agreement on the date of Defendant's notice to Plaintiff, August 8, 1975, that no further barges of soybean screenings would be shipped by Defendant, and:

That the Defendant shall pay to the Plaintiff the sum of One Hundred Thirty Eight Thousand Forty Dollars (\$138,040) which, as determined by the Committee, represents the difference in the cash value of soybean screenings on August 8, 1975, and the price of soybean screenings determined from the formula set forth in the letter agreement basis CIF Houston-Galveston.

Arbitration Committee:

/s/ Chester W. Polson, Chairman
Continental Grain Co.
Kansas City, Missouri

/s/ Charles Turnquist
Quaker Oats Company
Chicago, Illinois

/s/ Charles Johnson
The O.A. Cooper Co.
Humboldt, Nebraska

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Decision of Arbitration Appeals Committee Case #1532

Having fully considered all the evidence submitted and the oral argument, the Appeals Committee sustains the findings and decision of the Arbitration Committee.

At the same time the Appeals Committee observes regretfully that both Parties to this transaction left much to be desired in their preparation and performance of the contract.

Arbitration Appeals Committee:

/s/ H.V. Nootbaar, Chairman
H.V. Nootbaar & Co.
Capistrano Beach, California

/s/ Madison Clement
Clement Grain Co.
Waco, Texas

/s/ Bruce Cottler
Bartlett & Co.
Kansas City, Missouri

/s/ Charles Holmquist
Holmquist Elevator Co
Omaha, Nebraska

/s/ Clayton Johnson
Midstates Terminals Inc.
Toledo, Ohio