



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

December 12, 1978

ARBITRATION CASE NUMBER 1544

Plaintiff: R. F. Cunningham & Co., Inc., Melville, New York

Defendant: Pennfield Corporation, Lancaster, Pennsylvania

Claim: \$1,438.13

The dispute was over weight difference on car #PCB 888997, a hopper car of 38 lb. test oats on which seller and buyer contractually agreed on weight basis "official or track scale weight to apply."

The Defendant paid for car on his out turn weight which was less than invoiced. The Plaintiff refused to accept settlement, having invoiced car on track scale weights in compliance with contract.

A review of submitted information and documents furnished the committee reveal that:

The Plaintiff in fulfilling his part of contract complied with the contract weight basis "official or track scale weight to apply." The Plaintiff submitted a track scale weight certificate to substantiate weight used in invoicing that car.

The Defendant noted on arrival of car in yard 7/1/77 that the car could not hold 168,800 lbs. 38 lb. test oats, having a cube of 4,785 ft. The Defendant however failed to immediately notify seller that weight was considered to be in error nor refuse to unload because of alleged shortage. The car was unloaded a week later (7/8/77) without protest.

The Defendant using a formula of 1.24 cu. ft. per bushel x 38 lb. test weight assumed 4,785 cubic ft. car could not hold more than 146,637 lbs. This assumption he supported by exhibit of automatic scale ticket showing 457 dumps x 320 lbs. per dump plus 220 lbs. plus 215 lbs. screenings, a total of 146,675. There was no indication of the scales being certified nor individual weighing being a certified weighmaster.

The conclusion of the committee was that since Plaintiff faithfully fulfilled his part of the contract,

and Defendant at the time at which he assumed the car to be short, failed in good faith to immediately notify Plaintiff of such claimed shortage,

and, since neither using a formula of cube x test weight or the use of weight on uncertified scales by uncertified weigher which is an accepted trade practice in the presence of track scale weights as agreed in contract,

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the committee unanimously finds for the Plaintiff and rules that Defendant shall pay Plaintiff \$1,438.13 in full for the oats as invoiced.

/s/ R. J. Martin, Chairman Martin's Feed Mills, Inc. New Paris, Indiana	/s/ Jerry Bumgardner Ralston Purina Co. St. Louis, Missouri	/s/ Roland Scheiderer Ohio Grain Co. Mechanicsburg, Ohio
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Decision of Arbitration Appeals Committee

Arbitration Case Number 1544

Plaintiff: R. F. Cunningham & Co., Inc.

Defendant: Pennfield Corporation

The Arbitration Appeals Committee considered the evidence as presented to the Arbitration Committee and reviewed the findings and conclusions of that Committee dated June 2, 1978.

The Committee was unanimous in its affirmation of the decision of the Arbitration Committee that the Plaintiff, R. F. Cunningham & Co., Inc., had properly fulfilled its contract and should be awarded the sum of \$1,438.13 from the Defendant, Pennfield Corporation.

In accordance with Arbitration rule, Sec. 9 (g), the new evidence presented in the Appeal was not taken into consideration. To entertain any new allegations, even though the Plaintiff waived the rule, would violate the rule, render the original Arbitration Committee's consideration invalid, and be counter to normal judicial procedure.

/s/ Charles H. Holmquist, Acting Chairman
Holmquist Elevator Company
Omaha, Nebraska

/s/ Richard W. Goldberg
Goldberg Feed & Grain Co.
West Fargo, North Dakota

/s/ Bruce O. Cottier
Bartlett & Company
Kansas City, Missouri

/s/ W. C. Theis
Simonds-Shields-Theis Grain Co.
Kansas City, Missouri

/s/ Royce S. Ramsland
Quaker Oats Company
Chicago, Illinois