



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

November 11, 1980

ARBITRATION CASE NO. 1557

PLAINTIFF: Western Concentrates, Inc., Woodland, California

DEFENDANT: Mountain States Trading Company, Ogden, Utah

## FACTS

Western Concentrates, Inc., sold Mountain States Trading Company one hopper car of Number One Choice Klages Malting Barley, F.O.B. San Luis Valley. Denver grades, destination official weights to apply. Number Two two/rowed Malting Barley, which the car graded at Denver, was to apply at \$0.10 cwt discount.

On arrival at destination, the maltster, Laddish Malting Co., Jefferson Jct., Wisconsin, believing the car would not qualify for malting, requested a Federal Appeal, which confirmed his opinion as the car contained 3.4% damaged kernels.

Mountain States Trading Company paid Western Concentrates, Inc., \$3,618.22, the value of feed barley, leaving a balance of \$6,062.78 due Western Concentrates, Inc., if the car had been settled on Denver grade.

It is this amount, \$6,062.78 plus interest, that Western Concentrates, Inc., is claiming against Mountain States Trading Company.

## DECISION

The Arbitration Committee rules in favor of the Plaintiff, Western Concentrates, Inc.

Under Rule 16 (a), Defendant waived his rights when the car left Denver. The last sentence of this rule reads "Diversion of the shipment by the buyer to some point beyond the said billed destination shall constitute an acceptance of the grain and a waiver of the guaranty." Further the car of barley did grade within the contract specifications at Denver. The Defendant took the risk of billing the car before the sale sample was received. When he received the sample, and if he considered it suspect, he should have called a Denver Federal on the file sample immediately.

Mountain States Trading Company should pay Western Concentrates, Inc., \$6,062.78 plus interest at 11% from January 31, 1980 until date paid.

/s/ Mr. Charles Miller, Chairman  
Peavey Company  
Commerce City, CO

/s/ Mr. Blair Erigero  
Farmers Export Co.  
Portland, OR

/s/ Mr. Allan L. Burdick  
Burdick Grain Company  
Minneapolis, MN