



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

December 16, 1982

Arbitration Case Number 1590

Plaintiff: The Pillsbury Company, Minneapolis, Minnesota

Defendant: CPC International Inc., Englewood Cliffs, New Jersey

Statement of the Case

The dispute in this case involved the transmittal of shipping instructions and execution of a contract made on June 5, 1981 between the Plaintiff and the Defendant.

This contract was made by a broker (King), an employee of McCanless & Company, Inc., Brentwood, Tennessee, wherein the Plaintiff sold five cars of 60 percent corn gluten meal to the Defendant f.o.b Chicago for unrestricted shipment in June 1981 at \$270 per ton.

On June 8, the Defendant properly issued shipping instructions to the Plaintiff to Zacky Farms at Fresno, California. This also is not in dispute by either party. These instructions were issued orally.

The Plaintiff requested an alternative set of shipping instructions orally because the Plaintiff's supplier initially refused to ship to Zacky Farms. The Defendant was unable to supply an alternative destination and the Defendant claimed it orally cancelled this contract on June 12. The Defendant reaffirmed the cancellation orally on June 16, 1981 because it was frustrated from shipping to the original destination it had properly nominated on June 8, 1981.

No evidence or representation was submitted by the Plaintiff of any attempt or effort on its part to fulfill its contract obligation to the Defendant elsewhere in the marketplace during the three weeks remaining of the contract-shipping period.

The Plaintiff claimed, on four cars unshipped on that contract, the difference between the contract price (\$270 per ton) and market price (\$235 per ton) on his date of cancellation (July 1, 1981), which amounted to \$10,500 plus interest since July 1, 1981.

The Defendant counterclaimed \$7,264.17 plus interest since July 1, 1981, which represented freight absorption and lost profit on the four cars it shipped from its own Chicago plant to satisfy its obligation to Zacky Farms because its contract with the Plaintiff was frustrated for four of the five cars to be shipped to Zacky Farms.

The Decision

Since there was no dispute as to the contract or original shipping instructions given orally by the Defendant, CPC, to the Plaintiff, Pillsbury, on an unrestricted contract, Pillsbury's obligation was to ship as instructed. Eventually, Pillsbury did

ship one car against the five-car contract. Although CPC failed to follow established written procedures to act against Pillsbury when Pillsbury did not comply with CPC's shipping instructions, sworn testimony as to what transpired orally cannot be ignored. Therefore, Pillsbury's claim for unproven damages is denied. Pillsbury had no contractual reason for not filling the original shipping directions.

The Defendant's counterclaim also is denied since its formal actions under the rules to cancel the contract were unilaterally and improperly taken.

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