



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

Volume XXXVIII, Number 2, January 31, 1985

Arbitration Case Number 1614

Plaintiff: Montana Merchandising Inc., Great Falls, Mont.

Defendant: Penny-Newman Grain Co., Fresno, Calif.

Statement of the Case

This arbitration case involved the weights and weighing methods used on three separate contracts of barley. Each contract concerned a 26-car unit train shipped by Montana Merchandising Inc., Great Falls, Mont. to Penny-Newman Co., Fresno, Calif. All three contracts involved settlement on the basis of railroad track scale weights. This was agreed to by both parties in all contracts and also was shown on the broker's copy. The dispute centered around the fact that Penny-Newman used out-turned truck weights as settlement of the contracts rather than track scale weights.

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| Amount of Claim: | Train Number 1 = \$ 3,355.86 |
| | Train Number 2 = 3,460.59 |
| | Train Number 3 = <u>6,390.71</u> |
| | \$13,207.16 |

There is no evidence of an agreement between the two parties to utilize out-turned truck weights. The National Grain and Feed Association's Grain Trade Rule 4A, states that on rail grain shipments, truck weights shall not apply unless otherwise specified. Grain Trade Rule 41 states that contract changes must be agreed to by both parties and confirmed by both in writing. This did not occur in this case.

The Decision

Since there were some different circumstances surrounding the settlement of each of the trains, the arbitration panel determined the settlement of this case on a contract-by-contract basis.

The first train was covered by Montana Merchandising Inc. sale contract number 12624 and Penny-Newman purchase contract number 6655. The train was shipped on Dec. 5, 1983. Because of an error by the railroad, three cars -- BN 454123, BN 447820 and BN 447333 were not weighed. In instances in which cars

are not weighed, it is the custom of the trade that the billed weights are utilized. Utilizing the billed weights plus the track scale weights on the balance of the train, an invoice was submitted to Penny-Newman for delivery of 4,800,030 pounds of barley. Penny-Newman paid based upon delivery of 4,752,430 pounds determined by the out-turned truck weights.

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| Total invoiced value of train: | 4,800,030 lbs. x 7.05 cwt = | \$338,402.18 |
| Total paid by Penny-Newman: | 4,752,430 lbs. x 7.05 cwt = | <u>335,045.32</u> |
| Total claimed by Montana Merchandising Inc. | | \$ 3,355.86 |

Concerning this trainload, the arbitration panel found in favor of the plaintiff. The plaintiff should be paid \$3,355.86 plus interest at 11½ percent prime rate plus 1 percent for the period from Dec. 5, 1983, to Dec. 17, 1984.

The second train involved Montana Merchandising Inc. sale contract number 12628 and Penny-Newman purchase contract number 6659. Even though the Montana Merchandising Inc. contract called for destination official weights, both parties were aware that at the destination -- Kerman, Calif. -- official weights were not available. Further, the terms of the previous contract and the terms of the following contract and in fact the billing of the cars was done properly. Thus, this is not a pertinent part of this settlement. Again, Penny-Newman made the settlement based upon out-turned truck weights, which were not applicable.

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| Total invoiced value of train: | 4,886,610 lbs. x 7.15 cwt = | \$349,392.61 |
| Total paid by Penny-Newman: | 4,838,210 lbs. x 7.15 cwt = | <u>345,932.02</u> |
| Total claimed by Montana Merchandising Inc. | | \$ 3,460.59 |

The arbitration panel found in favor of the plaintiff, Montana Merchandising Inc. Its original claim of \$3,460.59 is to be reduced by the weight differential between marked and actual tare weights on five cars. That amount -- 4,440 pounds at 7.15 hundredweight -- equals \$317.46. Therefore the settlement is \$3,143.13 plus interest at 11½ percent plus 1 percent for the period from Dec. 23, 1983, to Dec. 17, 1984.

The third train involves Montana Merchandising Inc. sale contract 12639 and Penny-Newman Co. purchase contract number 6673. Again, the Penny-Newman Co. utilized truck out-turned weights for a settlement basis. It has since supplied actual tare weights on cars that applied in this invoice. Truck weights do not apply; Penny-Newman is entitled to the same differential determined by the actual tare weight of the railroad cars. The weight difference was 19,300 pounds at 7.10 hundredweight, which equals \$1,370.30. This amount was deducted from Montana Merchandising Inc.'s claim.

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| Total invoiced value of train: | 4,962,460 lbs. x 7.10 cwt = | \$352,334.66 |
| Total paid by Penny-Newman: | 4,872,450 lbs. x 7.10 cwt = | <u>345,943.95</u> |
| Amount claimed by Montana Merchandising Inc. | | \$ 6,390.71 |

The arbitration panel found in favor of the plaintiff, which is to be paid \$5,020.41 plus interest at 11½ percent plus 1 percent from Dec. 9, 1983, to Dec. 17, 1984.

The following table summarizes the results of this arbitration decision.

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| Train Number 1: | Claim: | \$3,355.86 | |
| | Interest: | + 432.79 | |
| | Total: | | \$ 3,788.65 |
| Train Number 2: | Claim: | \$3,460.59 | |
| | 4,440 pounds at 7.15: | - 317.46 | |
| | | 3,143.13 | |
| | Interest: | + 386.10 | |
| | Total: | | \$ 3,529.23 |
| Train Number 3: | Claim: | \$6,390.71 | |
| | 19,300 pounds at 7.10: | -1,370.30 | |
| | | 5,020.41 | |
| | Interest: | + 596.21 | |
| | | | \$ 5,616.62 |
| Total due to Montana Merchandising Inc.: | | | \$12,934.50 |

Submitted with the consent and approval of the arbitration committee, whose names are listed below.

Gary W. McKinney, chairman
Lincoln Grain Inc.
Atchison, Kan.

William J. Bird
ConAgra Feed Ingredient Merchandising Co.
Pasadena, Calif.

R. B. Danielson
Coast Grain Company
Norwalk, Calif.