

"THE SECRETARY REPORTS—"

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Case No. 1416

ARBITRATION REPORT

As required in Section 8 (k) of the Arbitration Rules, your secretary reports regarding Case No. 1416, Cargill, Inc., Kansas City, Mo., Plaintiff and Leo H. Connell Grain Co., Denver, Colo., Defendant. The case between the two firms concerns a contract entered into on January 10, 1947, covering the purchase by the Plaintiff from Defendant of ten (10) cars, no specified capacity, of No. 1 Hard Winter wheat at \$2.08 per bushel, delivered Kansas City, for January shipment. The Defendant shipped a total of eleven (11) cars to Plaintiff and nine (9) cars for application on the contract. The case revolves around the delivery of two (2) of the eleven cars to the Plaintiff.

Subsequent to the shipment of the two (2) cars in question, Defendant shipped nine (9) cars for application on the contract, and exchange bills of lading were issued direct to Cargill, Inc., Kansas City. The two (2) cars are identified as Milwaukee 716891 and CBQ 131834. On or about January 21, 1947, car Milwaukee 716891 arrived in Kansas City, and upon instructions from the Defendant, the Plaintiff claimed the car, paying the draft and taking up the bill of lading. That car was billed to the order of the Defendant, notify shipper. On January 23, 1947, Defendant telegraphed Plaintiff to deliver the bill of lading to Standard Milling Co., Kansas City, Mo. Plaintiff complied with request. Defendant's telegram read in part, "will apply another car to you".

On January 23, 1947 car CBQ 131834 arrived in Kansas City, billed to the order of the Defendant, notify shipper. The car was inspected on January 25, 1947, and on that date was ordered on bond by the Standard Milling Co., Kansas City. Previous to that date, on January 21, 1947, Defendant telegraphed Plaintiff "Advise Burlington car CBQ-131834 Akron origin wheat yours". On that date Plaintiff signed the State of Missouri Grain Warehouse Department request book, and on January 23, 1947 the Plaintiff honored a draft drawn on it by Defendant, and took possession of the bill of lading. On January 27, 1947 Defendant telephoned Plaintiff and asked

that the bill of lading be delivered to Standard Milling Co. Of interest as to the events surrounding the delivery of both cars, is a letter dated April 17, 1947, to Plaintiff from Missouri Grain Warehouse Department, part of which read "Concerning cars Milwaukee 716891 and CBQ 131834 we wish to say your company signed the request on both cars but through an error Standard Milling claimed and signed for them".

Plaintiff did not receive any further actual deliveries over and above the nine (9) cars and on March 18, 1947, telegraphed Defendant asking about in complete delivery and again on March 26, 1947, and finally wrote on April 7, 1947. Defendant replied on April 15, 1947, claiming that eleven (11) cars had been shipped, and that Plaintiff had failed to notify the railroad that the two cars in question were its despite the receipt of telegraphic notice.

The Committee, in arriving at its decision, pointed out that the Defendant's claim that eleven cars were shipped, is not borne out by the records as two of the cars were diverted by Defendant to Standard Milling Co., Kansas City, Mo. Therefore, up to April 15, 1947, only nine (9) cars had been delivered on the contract. Under Rule 7, of the Trade Rules of the Grain & Feed Dealer's National Association, the liability of the seller shall continue until the remainder of the contract has been shipped, the contract cancelled or the deficit bought in for seller's account as was done in this case. Under Rule 7, Plaintiff purchased a car of No. 1 Hard Winter wheat on spot at \$2.65 3/4 to complete contract.

Therefore, the committee after careful consideration found in favor of the Plaintiff, awarding it damages in the amount of 57 3/4c per bushel on 1400 bushels of No. 1 Hard Winter wheat or \$808.50, and Defendant to pay any costs of arbitration.

APPEAL

The Defendant in accordance with Section 9 of the Arbitration Rules appealed the decision of the Arbitration Committee, and the case following the submittal of the appeal statement by

Defendant and counter brief by Plaintiff was referred to the Committee on Arbitration Appeals. Defendant contends that on the basis of evidence submitted Plaintiff does not prove that the amount claimed in damages was actually sustained that Plaintiff definitely contributed the resulting situation by its failure to claim the cars in question, and that the Committee on Arbitration Appeals should sustain verdict of the Arbitration Committee the damages sought by Plaintiff should be adjusted to a degree which would more equitably reflect Plaintiff's own responsibility for its failure to prudently. Plaintiff contended that the rise in the price of wheat during the month of April, 1947, was common knowledge, that if it had selected a later date for the establishment of damages as provided under Rules 7 and 8, the damages would have been considerably increased. Plaintiff further stated that Defendant's diversion and selling of cars to Standard Milling Company put the burden on Defendant to furnish substitute cars and refers again to the main issue in the case, to wit: Was Defendant justified in delivering only nine cars on a ten car contract?

The Committee on Arbitration Appeals unanimously affirmed the decision of the Arbitration Committee and found for the Plaintiff, awarding it damages in the amount of 57 3/4c per bushel on 1400 bushels of No. 1 Hard Winter Wheat or \$808.50, and charged the Defendant with the cost of arbitration. The Committee in its decision stated:

(1) On the basis of evidence submitted there was nothing in the handling of the transaction which excused the Defendant from completing delivery of the contract.

(2) If, under the circumstances recited by the Defendant it felt that it was no longer under obligation to deliver more than nine cars, it should have advised the Plaintiff of its desire to cancel one car, and no doubt some satisfactory arrangement could have been made before there was any particular change in the market which would involve a loss to either party. On the contrary, the Defendant made no statement of any kind, so far as this Committee can learn from the evidence and therefor, the Plaintiff at all times expected completion of the contract.

Politicians and merchants understand people, which is more than you can say for the intellectuals.