GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

May 11, 1950

CASE NO. 1433
PLAINTIFF - TRANSIT GRAIN CO., FORT WORTH, TEXAS
DEFENDANT - R. F. CUNNINGHAM & CO., PITTSBURG, PA

The first committee drawn from the members of The Arbitration Panel to consider this case was composed of Mr. H. L. Kearns, Amarillo, Texas, Chairman, Mr. E. L. Dial, Albers Milling Company, Oakland, California, and Mr. Walter H. Toberman, Toberman Grain Company, St. Louis, Missouri. The decision of this committee was appealed by the Defendant and the decision of The Committee on Arbitration Appeals follows:

This dispute arose over the question of what weights should govern in final settlement of this car in question. On March 28, 1946 the Plaintiff sold Defendant 16 cars - No. 2 Yellow, No 2 Mixed or No. 2 Kaffir. The car involved in Plaintiff's claim was reconsigned by the Defendant to the Bedford Milling Co , Bedford, Pennsylvania. The amount of the claim is $576.36.

Rule 22 is involved in this case, but there does not seem to be a clear-cut rule as to whose responsibility it is to furnish official weights and grades when the contract itself is not specific on this point.

Both Plaintiff and Defendant's confirmations read "official weights". The Defendant, not receiving weight certificates, wired the Plaintiff, asking where they were and asked if the Plaintiff would accept destination weights. Plaintiff, in turn, replied "Yes, take destination weights." There probably would not have been an arbitration had the Defendant asked if Plaintiff would accept destination official weights or if the Plaintiff, in reply, had stated "Yes, we will accept destination official weights." Neither the question nor the answer mentioned official weights, but as the contract, itself, called for official weights, both buyer and seller should have been thinking in these terms.

Even if the Defendant was not thinking in terms of official weights, it is the opinion of this Committee that when a buyer sends a car, which has not been officially weighed, to an unofficial destination, the buyer must, himself, assume responsibility for a reliable weighing performance. After all, the party unloading the car was a customer of the Defendant, and presumably, the Plaintiff had no knowledge of this third party and no way of judging his reliability. The evidence in this case indicates a great question as to the propriety of Bedford Milling Company's practices in weighing. They apparently furnished no scale tickets of any kind or no satisfactory evidence of the amount of grain in the car beyond their sworn statement. At the same time, they tried to use transit to the extent of 99.891 pounds and furthermore, apparently they have never supplied the original paid freight bill as required under Rule 2.

It is admitted that railway scale weights are not completely accurate, but certainly they are not inaccurate to the extent of some 16,000 pounds. Inasmuch as the car arrived at destination with seals intact and no evidence of leaking, there seems to be no alternative except to accept the track scale weight at San Antonio, Texas, in preference to the very sketchy and somewhat conflicting evidence of weight at destination.

For these reasons, the majority opinion of this committee concurs in th majority decision of the original Arbitration Committee and awards to the Plaintif the sum of $576.36. The cost of this arbitration is to be borne by the Defendant.

The MINORITY opinion of our Committee is as follows:

As we all know, the contract between two other parties, called for official weights and grades, but inasmuch as certificate of loading was not furnish buyer and seller, thru interchange of wires, agreed to accept destination weights.

With this thought in mind, regardless of any other factor, writer beli that destination weights, should be accepted so, of course, my decision is in favo the Defendant.