

## "THE SECRETARY REPORTS—"

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### ARBITRATION REPORT

As required in Section 8(k) of the arbitration rules, your Secretary reports regarding Case No. 1440, P. R. Markley, Inc., Philadelphia, Pennsylvania, plaintiff, and George W. Hoyland, Inc., Kansas City Missouri, defendant.

The dispute arose over the sale of a car of Bran by the defendant to the plaintiff. The question involved is the liability of the defendant for damages because the Bran was out of condition. There is no dispute as to the following facts: The Bran was sold to arrive sound, cool and sweet. The car arrived at 11:05 a. m., Friday, August 27. It was inspected Tuesday, August 31. When inspected, the Bran was found to be hot, baked and sour. The weather during the time it stood on track was very hot. Amount involved \$750.00. Rules governing this case are Rule 13 and Rule 13 (b).

The committee considering this case was composed of Mr. Leland C. Miller, Federal-North Iowa Grain Company, Chairman; James A. Gould, McKee Feed & Grain Company, Muscatine, Iowa; and Moses Cohen, Atlantic Grain Company, New York, New York. The committee rendered a majority decision which is outlined first and a minority decision which follows:

In arriving at this decision we have placed emphasis upon the existence of

Rule 13, Section (b) of the Trade Rules. We have felt that we could not ignore this rule subscribed to by each member of the association to which both plaintiff and defendant belong. This rule was not observed by the plaintiff although we do not doubt the sincerity and the arguments by the plaintiff nor those advanced by our fellow committee member as to why the car was not inspected sooner than four calendar days or three business days after arrival. We do feel, however, that if local conditions prevail thereby making it impractical to inspect a car within the time limit stated in Section (b), Rule 13, then the buyer shall not be relieved of responsibilities he may have under Section (b), Rule 13 by reason of these local conditions over which he may have some control.

The car may have been out of condition on the day of its arrival. It certainly was out of condition four days thereafter. The producer of the Bran offered the plaintiff \$10.00 per ton to settle the argument which was refused in the face of the Trade Rules. Later both parties agreed to arbitrate according to what the Arbitration Committee found in the testimony and according to the Trade Rules to which they were bound. We therefore, find that Trade Rule 13 Section (b) was not observed by the plaintiff and his claim of \$750.00 against the defendant be not awarded.