

# Arbitration Decisions

September 21, 1950

CASE NO. 1454

PLAINTIFF - Greutker, Inc., Buffalo, N. Y.

DEFENDANT - Milwaukee Feed & Grain Co., Milwaukee, Wisc.

The first committee from the members of The Arbitration Panel to consider this case was composed of Mr. Walter H. Toberman, Toberman Grain Co., St. Louis, Mo., Chairman; Mr. Fred Carr, Hallet & Carey, Minneapolis, Minn., and James A. Gould, McKee Feed & Grain Co., Muscatine, Iowa. The decision of this Committee was appealed by the Plaintiff, and the decision of The Committee on Arbitration Appeals while somewhat different confirmed the findings of the original Arbitration Committee. The decision was a majority and minority opinion. The majority opinion follows.

This case covers the disposition of a car of soybean meal, portion of which was to apply on a contract that provided for shipment during December 1948. The shipment was not made until January 4, 1949.

Grain Trade Rule 14 governs this case. Rule 14, as written, is very involved, but it provides (1) that a contract, once made, remains in force until either Buyer or Seller takes action to terminate it; (2) it sets forth the rights and privileges of both Buyer and Seller to terminate the contract at its expiration and (3) if neither Buyer nor Seller takes action to terminate a contract, it provides in Paragraph 3, Section (g) that -

"If the Seller has not received notice to terminate the contract before shipment is made, the contract is extended to include the shipment and delivery when made."

The balance due on this contract was 25.28 tons. The contract price was \$68.00 per ton. Buyer and Seller agreed that the market price of the meal, at the time the car was delivered, was \$64.50 per ton. Buyer agreed to handle the car at that price. Seller refused this proposition and elected to make disposition of the car.

It is the majority decision of this Committee that the Plaintiff was obligated to accept the balance of the contract of 25.28 tons at the contract price of \$68.00 per ton. Not having agreed to do so, he is charged with the difference between the contract price of \$68.00 per ton and the agreed price of the meal, at the time the car was delivered, which was \$64.50 per ton, a difference of \$3.50 per ton, amounting to \$87.48.

Defendant, having elected to dispose of the car, the additional loss and expense is his responsibility. Defendant had no right to withhold the \$256.00. That was an entirely different transaction. But, having done so, he is required to pay to the Plaintiff \$168.52

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The length of the minority opinion precludes general publication. However, this office will be glad to send any interested member a copy upon request.