NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

ARBITRATION CASE NUMBER 1543

June 7, 1978.

PLAINTIFF: The Pillsbury Company, Augusta, Georgia

DEFENDANT: Lapeyrouse Grain Company, Mobile, Alabama

The case involves a dispute over a 25¢ per bushel crotalaria discount totalling $1,689.50 assessed against the contents of two cars, part of a 250,000 bushel sale by plaintiff (Pillsbury) to defendant (Lapeyrouse). Contract settlement terms were to be based on First Official Grades and Destination Weights.

Pillsbury contends that the discount was arbitrary and, that while advice of the Mobile, Alabama official grade dated October 4, 1976 including the certificate notation of "Contains 1 crotalaria seed in 1,000 grams" was received from Lapeyrouse on October 5, 1976, Lapeyrouse did not state that the cars were inapplicable to contract nor did Lapeyrouse propose a discount for the crotalaria notation. This fact is not contested by Lapeyrouse, who counters that Pillsbury was advised that it had 5 days in which to request Federal Appeal. The cars in question were unloaded by the Mobile Public Grain Elevator on October 6, 1976.

Lapeyrouse argues that:

a) Buyer's contract specified "Shipment not to contain crotalaria."
b) Rejection or acceptance was conditioned on whether the unloading elevator had the capability to do the reconditioning of the grain.
c) The Lapeyrouse discount sheet specifically excludes crotalaria; but that the (Lapeyrouse) crotalaria discount has been used for "...several years" and "...has subsequently been used on other Pillsbury cars without comment or complaint."

With further reference to (b) above, the Committee notes correspondence from Lapeyrouse to Pillsbury dated April 18, 1977 in which Lapeyrouse states that "... crotalaria and the rules under which it is accepted or rejected in Mobile is one for which Lapeyrouse has no governing control." A letter from the Mobile Public Grain Elevator essentially states the same.

In determing the facts of this case, the Committee noted that:

a) The Lapeyrouse Confirmation does state "Shipment guaranteed not to contain crotalaria." However, the Confirmation is not signed by Seller, Pillsbury.
b) The Pillsbury Confirmation does not contain reference to a "no crotalaria guarantee." The Pillsbury Confirmation is signed by the Buyer, Lapeyrouse, with no exception noted to the absence of the crotalaria guarantee.

In a technical interpretation, the Committee could base a finding for the Plaintiff on the evidence of the Confirmations. It clearly appears to have been the intent of both parties that the contract limit the application of corn containing crotalaria and their arguments do not suggest otherwise. However, this observation should once again underline the fundamental duty of Buyer and Seller to get their terms straight.

-OVER-

The Committee, by unanimous agreement, finds in favor of Plaintiff, The Pillsbury Company, based on the following:

1) Buyers notice to Seller did not explicitly state that the grain was not applicable on contract, i.e., that the cars would be rejected outright or, that agreement to a negotiated discount would be necessary prior to acceptance. Buyer admits that the grain was not rejected or a discount agreed upon.

2) While it can be argued that Buyer provided prompt reporting of grades, his subsequent action (unloading of the cars on the following day without advice to the Seller) constituted acceptance of the grain and a waiver of the guaranty.

3) The argument by the Buyer that he has/had no control over the policy of the receiving elevator is not pertinent. The receiving elevator is an agent of the Buyer and, therefore, is under control of the Buyer.

4) Seller's rights were further abrogated by the admission of Buyer that there is not a published discount on crotalaria. There is a mutual duty on the part of Buyer and Seller to agree on a proposed discount or to provide the Seller the opportunity to exercise the alternatives provided under the Trade Rules. The Seller is not to be subjected to unilateral discounts without the opportunity to exercise his alternatives.

5) There is no relief afforded Lapeyrouse by virtue of the fact that said grain was not actionable under the FDA/USDA tolerance (more than two seeds per 1,000 grams). In any case, such an argument would be moot due to Lapeyrouse' acceptance of the grain.

6) The finding in this case is not to infer that the Seller is without responsibility to respond to Buyer's notification of an off grade. In this case, the Seller did not respond as he should have (Rule 17). However, we place the heavier burden on the Buyer for his failure to give explicit notification to Seller of the inapplicability of the cars in question and to advise Seller of his intention to reject said cars, or; alternatively, make a proposal to Seller to accept said cars at a discount.

Therefore the Committee orders Lapeyrouse Grain Company to pay The Pillsbury Company $1,689.50.

Arbitration Committee of the National Grain and Feed Association

Robert Wilson, Chairman
Bunge Corporation, St. Louis, Missouri

Thomas F. Toohey
Agricol Georgia, Inc., Atlanta, Georgia

Morris Champion
The Early & Daniel Co., Inc., Cincinnati, Ohio

peg