



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

March 16, 1979

ARBITRATION CASE NO. 1545

PLAINTIFF: Schouten International

DEFENDANT: Continental Grain Co.

CROSS PLAINTIFF: Continental Grain Co.

CROSS DEFENDANT: Cargill, Inc.

On May 23, 1978, Schouten filed an arbitration against Continental on the grounds that the pellets on barge RF324B were defective. On June 22, 1978, Continental counterclaimed against Schouten and cross-claimed against Cargill. Continental's counterclaim against Schouten was for money due and owing on barge RF324B in the amount of \$16,996.82. Its cross-claim against Cargill was based on the ground that if the product pellets were deemed defective, the manufacturer, Cargill, should be held responsible. On July 12, 1978, Schouten replied to Continental's counterclaim. Then, on July 14, 1978 Cargill replied to Continental's cross-claim and asserted a counterclaim against Continental for the costs it incurred in salvaging the contents of barge RF324B after Schouten rejected the shipment. Continental then filed a surrebuttal brief to Schouten's reply on July 31, 1978 and filed a rebuttal brief on August 8, 1978 to Cargill's counterclaim against Continental for the costs incurred in salvaging the barge contents. Last, Cargill filed a surrebuttal brief in which it alleged that the salvage charges in Cargill's counterclaim against Continental were recoverable from Continental and/or Schouten; however, Cargill had only asserted its counterclaim for salvage costs against Continental and, as such, Schouten has not responded to the alleged salvage cost claim or otherwise sought to defend itself against Cargill's claim which is asserted solely against Continental.

Schouten's claim and thence Continental's that Cargill may have manufactured and shipped defective product in barge RF324B is not proven. Evidence to the contrary in fact via the original submitted sample and Continental's probed sample at destination indicate just the opposite. Schouten's failure to sample RF324B on a timely basis upon purchase from Continental (Feed Rule 13b) further invalidate Schouten's claim.

In the matter of alleged rescission, we find that Cargill acted in a commercially responsible manner in attempting to salvage the barge and its contents following Schouten's-Continental's statement of rejection.

(over)

Page Two

We, therefore, must conclude that through negligence and/or adverse weather the contents of barge RF324B went out of condition while in Schouten's control and legal possession.

Schouten International's claim is denied. Schouten International in addition, owes Continental \$16,996.82 covering the balance due on barge RF324B.

The panel finds it inappropriate to rule on the matter of salvage costs. Even though we found that Cargill acted responsibly, Schouten was denied an opportunity to reply to salvage claims set out in Cargill's brief.

Should the parties elect, the issue will be decided in a future hearing.

Respectfully,

/s/ M.J. Eberts, Chairman
Peavey Company
Minneapolis, MN

/s/ Richard Coonrod
Pillsbury Company
Minneapolis, MN

/s/ R.T. Creekmore
Indiana Grain, Queen City
Elevators Division. Indiana
Farm Bureau Coop. Ass'n., Inc.
Cincinnati, OH

MJE/djo