



# Arbitration Decisions

June 9, 1988

## Arbitration Case Number 1644

**Plaintiff: General Mills Inc., Minneapolis, Minn.**

**Defendant: Lees Carney & Co. Inc., Portland, Ore.**

### Summary of the Case

On Feb. 2, 1987, General Mills Inc. sold Lees Carney & Co. Inc. 20 cars of millrun wheat to ship as follows:

- Two cars per week the week of March 2, 1987 through the week of April 13, 1987.
- Three cars per week the week of April 20, 1987 through the week of April 27, 1987.

Lees Carney & Co. Inc. provided shipping instructions and General Mills Inc. shipped the first 14 cars within contract terms. Although the first two cars were a few days late, Lees Carney & Co. Inc. accepted shipment and therefore these shipments were within contract terms based upon Feed Trade Rules 14 (a)(3) — Time of Contract; Branch of Contract; and Procedure.

The next 12 cars were shipped essentially within contract time.

When General Mills Inc. asked for directions on the last six cars that were due to ship the week of April 20 and April 27, 1987, Lees Carney & Co. Inc. refused to provide shipping instructions. On May 1, 1987, General Mills Inc. advised Lees Carney that General Mills considered the contract breached and would resell the cars and invoice Lees Carney for the difference between the contract price of \$72 per ton F.O.B. North Coast Common Points versus the resale price, plus demurrage costs that resulted from Lees Carney's failure to provide shipping instructions.

Between May 1, 1987 and May 5, 1987 General Mills Inc. again offered to ship the cars but Lees Carney still refused to provide shipping instruction as obligated under its contract. General Mills then resold the three cars at the equivalent of \$52 per ton F.O.B. North Coast Common Points and three at \$43 per ton F.O.B. North

Coast Common Points. The loss to General Mills Inc. was calculated as follows:

• Three cars (50 tons per car) times \$20 per ton (\$72 per ton minus \$52 per ton):	\$3,000
• Three cars (50 tons per car) times \$29 per ton (\$72 per ton minus \$43 per ton):	4,350
	\$7,350
Demurrage	+ 320
Total	\$7,670

General Mills Inc.'s notice to Lees Carney and subsequent resale was in accordance with Feed Trade Rule 11.

### The Decision

Lees Carney was provided ample opportunity to provide shipping instructions to conform with the contract, but refused to do so. As a result, the arbitration panel agreed that General Mills Inc. should be reimbursed for the \$7,670 loss plus interest at 8.5 percent from May 1, 1987 to April 15, 1988.

Submitted with the consent and approval of the arbitration panel, whose names are listed below:

**James R. Ryan, chairman**  
International Multifoods  
Minneapolis, Minn.

**Carl Constans**  
Fredericks Grain Co.  
Portland, Ore.

**Michael Gorbitz**  
American-Maize Products Co.  
Chicago, Ill.