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## Arbitration Case Number 1695

**Plaintiff: Scoular Grain Co., Omaha, Neb.**

**Defendant: Continental-COF Co., Overland Park, Kan.**

DATE: April 8, 1993

Statement of the Case

On June 9, 1991, Continental-COF bought a 10-car unit of corn from Scoular Grain Co. FOB Holdrege, Neb., for shipment on June 20, 1991. Scoular had purchased the corn from the local cooperative in Holdrege, Neb.

On June 20, Scoular applied the unit to Continental. Continental then applied the unit to General Mills to cover an existing sale. General Mills supplied the billing instructions to forward the unit to Humboldt Feed Co. at Lovelock, Nev., via Southern Pacific Railroad delivery. There is no dispute concerning the purchase or sale contract.

The dispute involved shipping and billing instructions. Continental forwarded the billing to Scoular. Documents by Continental showed that the billing to Lovelock, Nev., was via Burlington Northern-Southern Pacific delivery with freight prepaid by Continental. Scoular's documents showed the route was BN - Dalhart - SSW - Santa Rosa - SP. Scoular instructed the shipper at Holdrege to bill the unit via BN - Dalhart - SSW - Santa Rosa - SP. This route did not apply for the specific commodity rates listed in BN Tariff 4022. The cheapest applicable rate was with the route of BN - Denver - SP.

The unit also was billed with charges to be prepaid by Scoular. But later, a corrected freight bill was changed by the Burlington Northern for freight charges to be sent to Continental. This was accomplished at Scoular's request on June 26, 1991.

However, Continental disputed the change. The lowest freight charge as a commodity rate via the route of BN - Denver - SP in the BN Tariff was \$1,575.00 per car or \$15,750.00 for the 10-car unit. The only rate applicable with the route of BN - Dalhart - SSW - Santa Rosa was a class rate combination of \$5,108.00 per car, or \$51,080.00 for the unit.

The Decision

This dispute concerned which party supplied the routing that actually moved the unit. Scoular claimed as plaintiff that Continental gave the incorrect route and that Scoular did not furnish the route. In resolving this dispute, the arbitration committee found that Grain Trade Rule 28 governed. This rule provides that "grain sold track or F.O.B. the original point of shipment shall be routed in accordance with the billing instructions furnished by the buyer."

The arbitrators also considered the following Interstate Commerce Commission holdings in deciding this case:

n "In some instances, the shipments were tendered to the original carrier on unrouted bills of lading, and in others, abbreviations of certain of the carriers were specified but the junction points were omitted. When a shipment is tendered unrouted, the carrier is obliged to forward it over the cheapest available route consistent with such partial routing instructions." *Adel Canning & Pickling Co. v. Georgia & F.R.*, 287 I.C.C. 239, 242 (1952).

n "The shipments from Wallaceville were specifically routed by complainant Southern, W.S.S.B.N. & W. Hagerstown Junction, Reading and the D. & H.' The other shipment was so routed except that the specified gateway, Hagerstown Junction, was omitted. In such circumstances, however, it is the duty of the carriers to forward the shipments over the cheapest available route consistent with the routing instructions." *Traf. Bu. Lynchburg, Cham. of Com. v. Southern Ry. Co.*, 185 I.C.C. 611, 612-3 (1931).

To the extent that the Interstate Commerce Act provides that the shipper routing instructions must be observed by carriers, those provisions have not been altered by the Staggers Rail Act of 1980. [*Cleo Wrap Corp. v. BN R. Co., et. al.*, 1 I.C.C. 2d 312 (1985).]

That same post-Staggers Act ICC decision validates basic pre-Staggers routing concepts, such as the duty of an origin carrier to notify a shipper if the shipper executes an ambiguous bill of lading. A footnote to *Cleo Wrap* states: "This decision does not affect the carrier's responsibility where the shipper does not specify a route. In that case, the carrier ordinarily may charge only the lowest available rate between the two places."

In accordance with the NGFA's Trade Rules and Interstate Commerce Commission holdings, the arbitrators found that Southern Pacific delivery was sufficient. The arbitrators found no evidence that Continental supplied any gateways or junctions in the route given to Scoular, and Scoular, having the burden of proof as plaintiff, failed to demonstrate otherwise.

#### The Award

The arbitrators found in favor of Continental-COF for the full award. Continental was directed to pay Scoular \$15,750.00 for freight charges (that amount being the freight charges for the cheapest available route) for the shipment, and Scoular was determined to be liable for payment of all charges to the rail carriers incurred for the actual route.

Submitted with consent and approval of the arbitration committee, whose names are listed below.

Terry Voss, Chairman

AGP Grain Ltd.

Omaha, Neb.

Steve Campbell

Louis Dreyfus Corp.

Overland Park, Kan.

Keith Hainy

South Dakota Wheat Growers Association

Aberdeen, S.D.

(Editors Note: The arbitrators in the case expressed concern over the failure of the parties to comply with Section 6(d) of the Arbitration Rules, which requires that original documents or verified copies be submitted as part of the record in each case. In fairness to the parties, it should be noted that the NGFA has not strictly enforced this particular rule in the past. Nevertheless, the rule is there to ensure that disputes over the authenticity of submitted documents are minimized.

In this case a particular document turned out to be a remade copy rather than an original or photocopy of an original. A simple verified statement reflecting the true status of the submitted document would have complied with the rule.)