"THE SECRETARY REPORTS——"

(In this space appear regularly all official Association documents)

ARBITRATION REPORT

As required in Section 8 (k) of the arbitration rules, your Secretary report regarding Case No. 1429, Casterline Grain & Seed, Inc., Dodge City, Kansas, Plaintiff, and Transit Grain Company, Fort Worth, Texas, Defendant.

The dispute arose over the sale by the plaintiff to the defendant of five cars of No. 2 Yellow Milo or No. 2 Mixed Milo Kafir. The particular question involved is whether or not the plaintiff had the right to unload, recondition and reload any car which might arrive at Kansas City grading lower than No. 2 Yellow Milo or No. 2 Mixed Kafir.

The contract between the parties was verbal, made over long-distance telephone. Both plaintiff and defendant confirmed the contract in writing, dated February 4, 1948. The written confirmations of contract did not agree. Plaintiff's confirmation called for "ten day's shipment--Kansas official grades". Defendant's confirmation called for "immediate shipment--Kansas City official inspection". All five cars were shipped immediately--on February 7, 1948.

There is no evidence in the confirmations exchanged between the two parties that any right of reconditioning was contemplated or that the time of shipment could be extended for that purpose. If the plaintiff had this right, it would also follow that time of shipment of the actual car delivered on the contract could be postponed indefinitely. Such a right would be rather unusual, and if there were such a novel understanding, it seems likely that some mention of it would have been made in the confirmations or by letter or by telegram. As it is, only the word of the plaintiff, and one of his employees is offered, as opposed to the word of the defendant.

The committee considering this case was composed of Mr. Walter H. Toberman, Toberman Grain Company, St. Louis, Missouri, Chairman; Mr. Arthur B. Fruen, Fruen Milling Company, Minneapolis, Minnesota; and Mr. Charles Flanley, Flanley Grain Company, Sioux City, Iowa. The amount involved was $1,017.03. The committee rendered an unanimous opinion in favor of the defendant. The decision of the committee follows:

Evidence shows plaintiff and defendant entered into this contract by telephone; that each confirmed the transaction by letter. Confirmations however were at variance but neither party objected to the other's confirmation. Plaintiff failed to object to defendant's confirmation as to the time of shipment; there is lack of sufficient evidence to support verbal contract, and plaintiff also failed to incorporate, in his written confirmation, provisions relative to reconditioning. We find, on basis of the evidence submitted in conformance with Rule No. 4, there was no meeting of the minds between the plaintiff and defendant and therefore no contract. The plaintiff has failed to make a case and therefore we find for defendant and that the cost of arbitration be assessed against the plaintiff.

The plaintiff appealed the decision of the Arbitration Committee and the decision of the Committee of Arbitration Appeals is given below. President Green appointed Mr. Cecil Blair, Norris Grain Company, Duluth, Minnesota, a member of the arbitration panel to replace Mr. B. O. Holmquist because Mr. Holmquist disqualified himself to serve.

It is the opinion of this Committee that an unusual condition of that kind places the burden of proof on the plaintiff, and the proof offered is not sufficient. We find on basis of evidence submitted that the decision of the original Arbitration Committee is correct and it is sustained. A minority opinion held that both defendant and plaintiff were equally at fault and the claim should be divided.