SPECIAL NEWSLETTER

GRAIN & FEED DEALERS NATIONAL ASSOCIATION

100 MERCHANTS EXCHANGE BUILDING

SAINT LOUIS 2, MISSOURI

July 19, 1949
No. 10

ARBITRATION REPORT --- As required in Section 8(k) of the arbitration rules, your Secretary reports regarding Case No. 1434, K. P. Jolly, Waterloo, Iowa, plaintiff, and George C. Adams & Company, Kansas City, Missouri, defendant.

The controversy in this case arose through the sale by the defendant to plaintiff of a car of fine ground peanut hull bran. The amount involved is $525.11, the invoice price of the bran, plus $189.95 covering freight, demurrage and other charges. The plaintiff seeks to recover the sum of $525.11 from defendant on the grounds that the bran arrived at destination unfit for use as commercial feed being infested with insect life, notably weevil. The defendant asserts that there is a balance due the railroad company for charges that accrued on the shipment after it left Kansas City, amounting to $189.95, for which he, defendant, is being held liable by the railroad company, and that same should be paid by plaintiff.

The committee considering this case was composed of Fred Carr of Hallet & Carey Company, Minneapolis, Minnesota, Chairman; Walter H. Toberman of the Toberman Grain Company, St. Louis Missouri and Moses Cohen of the Atlantic Grain Company, New York, New York. The committee rendered a majority decision in favor of the defendant and a minority decision in favor of the plaintiff.

The plaintiff appealed the decision, and the Committee on Arbitration Appeals unanimously rendered a decision in favor of the plaintiff awarding him the full amount of his claim for $525.11 and ruling that the additional claim of $189.95 for freight, demurrage and other charges be for the account of defendant plus costs of arbitration. The complete decision of the Committee on Arbitration Appeals follows.

This dispute arose over the sale by the defendant to the plaintiff of a car of fine ground peanut hull bran. The amount involved is $525.11, the invoice price of the bran, plus $189.95, covering freight, demurrage and other charges.

Decision in this case rests upon (1) the question of application of Rule 13, which provides "shipments on contracts shall be guaranteed by seller to arrive cool, sweet and sound, etc." or (2), if it is determined that the agreement between buyer and seller actually was based upon Kansas City inspection as final and this is construed to cancel the applicability of Rule 13, there would then remain the question of condition of the contents of car B&O 296682, when loaded in Kansas City, October 10, 1947.

(1) This committee does not find in the evidence any agreement that Kansas City inspection was to be final. Plaintiff's Exhibit 4, confirmation of purchase, is silent on the subject of inspection and is subject to the rules of the Grain & Feed Dealers National Association.

The committee does not agree with the majority decision of the Arbitration Committee that "Basis Kansas City" and "FOB Kansas City" mean approximately the same as "Kansas City Inspection". The former terms have only to do with the price basis and do not necessarily have any reference to the other provisions of the contract.

Plaintiff's Exhibit 6, copy of defendant's contract of sale, calls for "Kansas City Inspection, loading sacked weights".

Plaintiff's Exhibit 7-A is a copy of defendant's letter of October 13 advising that the car was not weighed in Kansas City as stipulated in their own confirmation. The defendant's invoice, as shown in plaintiff's Exhibit 7-B, does

not indicate that inspection or weight certificate was furnished to the plaintiff. The only references in any of the shipping documents to weights or inspection are on the bill of lading, as shown by plaintiff's Exhibit 7-C. Bill of lading provi "ALLOW INSPECTION" and "R R TRACK SCALE WEIGHTS TO BE OBTAINED AT KANSAS CITY". admitted by the defendant, track scale weights were not obtained at Kansas City and there is no evidence that the contents of the car were inspected at Kansas City, or elsewhere. We say this because defendant's Exhibit "E", official grain inspection certificate, issued by Kansas State Grain Inspection Department, is marked "Sample inspection" and is shown to be "furnished and represented by George C. Adams & Company as having been taken from B&O 296682". The certificate is dat August 17, 1948, and shows the above submitted sample to be "equal to lot No. 41 file with this Department".

It is evident that no official inspection was made of the car by the Kansas State Grain Inspection Department and that the only inspection was made ten months later on the basis of a submitted sample furnished by the defendant.

In view of all these circumstances, it is our decision that Rule 13 of the Feed Section of Grain & Feed Dealers National Association should apply.

(2) If the facts were different and we agreed that there was a meeting of minds on the point of Kansas City inspection, we would still have to rule that there was no official inspection at Kansas City and the defendant has furnished no proof that the commodity was free of weevil at time of shipment. The defendant would forfeit his right of relying on Kansas City inspection by failure to have such an inspection performed. In our opinion, this would automatically bring Rule 13 again into force.

As to the question of fact, we can only be guided by the affidavit of Rhea F. Dubois, as shown by Exhibit "G", that on or about October 17, 1947, he made an inspection of the said car and found it badly infested with weevils. He adds the following: "This car was the worst infected lot of grain or feed I ever saw; that I saw the weevils in great numbers all over the sacks inside of the car, and all over the walls and ceilings of the car on the inside and in the cracks and crevasses; that I saw the weevils in great numbers all over the outside of the car, not only upon the sides but upon the top and on the underside as well; the car was very thickly infested and almost alive with weevils . ."

From this statement and other evidence, our conclusion is that, while it is possible for grain or feed to become infested from weevil already present in an empty boxcar in less than the normal gestation period of 20 to 25 days, it is not possible to become this badly infested in a six or seven-day period unless the empty car itself was simply swarming with weevil. An empty car with this many weevil present would be detected before loading, with even the most casual inspection. It is our opinion, therefore, that either the defendant was extremely careless in accepting such a car for loading or that the ground peanut hull bran was itself weevily at the time of loading.

It is the unanimous opinion of this committee that the plaintiff, K. P. Jolly, Waterloo, Iowa, shall be awarded the full amount of his claim, $525.11, to be paid to him by the defendant, George C. Adams & Company, Kansas City, Mo. and that the additional claim for freight, demurrage, etc., are for the account of the defendant.

The defendant is also to be assessed with the cost of this arbitration.