

"THE SECRETARY REPORTS—"

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ARBITRATION REPORT

As required in Section 8 (k) of the arbitration rules, your Secretary reports regarding Case No. 1436, H. W. Glassmeyer, Chester Springs, Pennsylvania, plaintiff, and La Budde Feed & Grain Company, Milwaukee, Wisconsin, defendant.

On May 26, 1948, defendant sold plaintiff a car of molasses beet pulp, the Hedy Feed Company, Buffalo, New York, acting as a commission house on the trade. The car was sold on the basis of \$98.85 Philadelphia for shipment first half June. Defendant confirmed sale by issuing its regular sales contract.

The car of molasses beet pulp was not shipped until June 21 or 22. Defendant notified plaintiff that the car was in transit on June 23. The notice was a telegram followed by an airmail letter defendant believing that plaintiff should be properly informed so that car could be cancelled if desired due to non-shipment within contract time.

Plaintiff first communicated with defendant regarding the car on July 15, stating it would not accept car unless the draft was reduced \$11.00 per ton. Defendant suggested the matter be settled by arbitration before this association the plaintiff agreeing to such and honoring the draft.

The committee considering this case was composed of Mr. Gunnard Johnson, Wolcott-Lincoln, Inc., Kansas City, Missouri; Chairman, Mr. Dean K. Webster, Jr., H. K. Webster Company, Lawrence, Massachusetts; and Mr. R. E. Miller, Updike Grain Corp., Omaha, Nebraska. The amount involved was \$443.80. The committee rendered a unanimous opinion in favor of defendant. The decision of the committee follows:

The plaintiff claims a loss of \$443.80

because a shipment was not made on contract date. The plaintiff bought of dried beet pulp from the defendant. The contract was made, for shipment the first half of June. The car was shipped until the 21st or 22nd of about six days after the time originally specified. Plaintiff turned the draft down when it was presented because of date of the bill of lading, complaining that the car was not shipped in specified time. Later plaintiff agreed to handle the car and in doing so there was a loss of some \$443.80 because of decline in the market.

The defendant claimed that the claim wasn't right under the contract. Defendant sends a contract to plaintiff in which defendant confirms sale of one capacity car, first half of June shipment, but in the body of this contract there is a paragraph which says:

"If shipment is not made as specified in this contract, contract remains in force from day to day until cancellation is received. When cancellation is received, if the seller can within 48 hours give evidence that the above described property is in the care of a Transportation Company then contract remains in force."

Plaintiff accepted this contract and signed it. On the 23rd defendant advised plaintiff that he had a bill of lading covering NYC 64463. Defendant didn't say anything else, only that the car was in transit on his contract to plaintiff.

Now plaintiff didn't protest or say anything until the draft was presented for payment, then claimed it wasn't shipped within contract time. But it would seem that under the terms of defendant's contract, without any cancellation from plaintiff, that defendant was within its rights in shipping the car and we find for the defendant.