THE GRAIN & FEED DEALERS NATIONAL ASSOCIATION

Arbitration Decisions

Nov. 18, 1954

CASE NO. 1486

Plaintiff: The Neumond Company, St. Louis, Mo.

vs

Defendant: National Oats Company, East St. Louis, Ill.

Nature of Dispute: Which Trade Rules were applicable in the replacement of a car of Dehydrated Alfalfa Meal, original car failing to meet standards of the contract.

"This case was brought under the Feed Trade Rules of the Grain and Feed Dealers National Association and is so decided.

"The plaintiff states in his Exhibit #1, paragraph #2 relative to the car first shipped on the contract under consideration: 'that you (the defendant) had the right to refuse same which you did'. Thus, the question then becomes: Is the defendant required to accept the replacement car of alfalfa meal for the car refused on May 17 at the price stipulated in said contract?

"Next, this brings the question down to: Does Rule #13 or #14 of the Association's Feed Trade Rules apply?

"It appears to us that Rule #13 was written to cover feeds, particularly wheat mill feeds, arriving at destination out of condition--either caked, musty or mouldy. It seems quite plain that it was not intended to cover deficiencies in guaranteed analysis. So we do not think Rule #13 applies in this case.

"Rule #14 defines the liability and the rights of both buyer and seller in the event of breach of contract. In this case the plaintiff contracted to deliver a car of dehydrated alfalfa meal with a specific guarantee of 17% protein and 100,000 units of Vitamin A on arrival under immediate shipment terms. The plaintiff accepted responsibility for delivering a product which would fulfill the specifications of the contract, and to which both buyer and seller had agreed upon. This is a question, therefore, of analysis on arrival and not of condition on arrival.

"The plaintiff admits that the car in question was shipped and tendered to the defendant without a laboratory check by either the shipper or the plaintiff to insure delivery of a product meeting the contract's specifications. The plaintiff took that chance on his own responsibility and so the defendant cannot be considered liable.

"The defendant exercised his right to refuse the car and agreed to accept a replacement car only at a lower price than in effect. He was not obligated to do this as the contract had been breached by the plaintiff and the defendant could have exercised his right to cancel and buy in elsewhere. The question of what the defendant might have done on a rising market is irrelevant because paragraph 1, 2 and 3 of section (a) (Buyer's Liability etc.) of Rule #14 cover that contingency.

"The defendant in agreeing to accept a replacement car only at the lower market price at which he could have bought elsewhere was within his rights under Rule #14.

"We, therefore, find for the defendant with the plaintiff to pay any costs of the Arbitration." James A. Gould, Chairman; Arthur B. Fruen; Paul C. Knowlton.