



National Grain and Feed Association Arbitration Decision

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January 10, 2002

Arbitration Case Number 1997

Plaintiff: Mena Corp., Laredo, Texas

Defendant: Commodity Specialists Co., Minneapolis, Minn.

Statement of the Case

This case involved the sale of eight railcars of black beans by Commodity Specialists Co. ("CSC") to Mena Corp. ("Mena").

Four railcars were shipped and a dispute arose over responsibility for deterioration of the beans between the time they were inspected at origin and when they were unloaded at destination.

On June 22, 2000, CSC and Mena entered into a contract that provided for the delivery of eight light railcars of U.S. No. 1 black beans to be shipped by CSC, two cars per week, between June 26, 2000 and July 22, 2000 to Brownsville, Texas. The beans were to be bagged in 100-pound polypropylene bags at a cost of \$454 per metric ton, basis Brownsville, Texas.

Under the contract, the quality and weight were to be final at the time and place of loading as delineated on shipper's/manufacturer's certificates. Payment for the shipments was cash against documents ("CAD") and NGFA Feed Trade Rules were to govern. The contract also provided that the written agreement, upon no written objection, constituted the entire agreement. Mena signed the contract with no written objections.

On June 30, 2000, CSC shipped four railcars of black beans to Mena at Brownsville, Texas. Documents were forwarded to Roser Customer Broker in Brownsville, a U.S. customs broker that represented CSC. After working with at least three Mexican customs brokers, Mena was unable to import the beans into Mexico because it could not obtain the proper documents from the Mexican government to import the beans. While the cars were waiting to be cleared for export at Brownsville, demurrage in the amount of \$7,400 accrued on the four rail cars.

Finally, Mena advised CSC in writing that they could import the beans through the port of Veracruz, Mexico. The cars were

diverted from Brownsville on Aug. 16, 2000 and, sometime between Aug. 18 and Aug. 20, the rail cars arrived at the port of Houston. CSC made arrangements through E.R. Hawthorne & Co. (Hawthorne), a custom broker in Houston, to unload and place the beans in containers for transportation to Veracruz, Mexico, via ocean freight. Upon unloading the cars, Hawthorne found that some of the beans had become wet and appeared to be rotten. Based upon the information provided, the arbitrators were unable to determine if one or all of the cars were found to be in such condition. No official inspection or reinspection was called for by either party in Houston.

On Aug. 22 or 23, 2000, Mena advised CSC that the beans did not comply with the contract. No written rejection of the cars was issued to CSC. Hawthorne then reloaded the beans. On Aug. 25, CSC requested that the Burlington Northern Santa Fe ("BNSF") Railroad move the railcars to Garcia Grain in McAllen, Texas. This request stated that Mena was responsible to the BNSF for the cost of the movement. On Sept. 5, Mena paid these transportation charges to CSC.

At least three of the cars arrived in McAllen on or around Sept. 13, 2000. At the urging of Mena, CSC requested a reinspection from the U.S. Department of Agriculture's Federal Grain Inspection Service, whose results showed that the beans were all U.S. No. 1 grade, with no indication of infestation. Mena claimed that the cars were not properly sampled.

On Sept. 20, 2000, one railcar was unloaded. Mena informed CSC that the beans from this railcar had an overpowering smell and were rotten. On Sept. 22, another inspection was performed by a different USDA inspector. In railcar BN249843, two-thirds of the beans were graded as U.S. No. 1 black beans and infested, while the remaining one-third of the car was graded U.S. sample grade, sour and infested. BN 250121 was determined to be sample grade and sour.

On Sept. 25, 2000, Mena sent a letter to CSC formally rejecting all the shipments and stating that the beans were not suitable for human consumption. On Sept. 28, CSC replied in a faxed letter to Mena claiming that it had met its contractual obligations and was not responsible for the grade at destination.

On Oct. 6, 2000, Mena's attorney wrote CSC and demanded \$227,866.50 in damages. This included \$123,559.72 that Mena

paid for the four railcars; \$49,875.18 for incidental damages; and \$54,431.60 for lost profit on the contract. Mena claimed that CSC shipped the beans before they had been requested. Mena also accused CSC of loading the beans in unfit boxcars that leaked and caused the beans to deteriorate. Mena also claimed that the beans were not properly made available at destination. Finally, Mena argued that the cars were sold and bought F.O.B. Brownsville, Texas, and therefore, CSC was responsible for the quality of the beans at destination.

The Decision

The arbitrators determined that a valid contract was entered into between Mena and CSC. The contract was written and signed by the parties and provided for the delivery by CSC of eight railcars of U.S. No. 1 black beans to be shipped, two cars per week, between June 26, 2000 and July 22, 2000, to Mena, F.O.B. Brownsville, Texas.

The arbitrators found, pursuant to the contract, that origin grades were to govern. The contract clearly stated that the quality certificates were "final at origin as per shippers/manufacturers certificate." The term "final" was customarily used in export contracts to make sure it was understood that origin inspection – and not any other inspection at any other time – was to govern.

In this case, the USDA/FGIS quality certificate from the origin inspection met the contract terms. Also, based upon NGFA Feed Trade Rule 18 [*Old Feed Trade Rule 13*], CSC was not responsible for quality at destination. Specifically, Feed Trade Rule 18(A) provides as follows: "(A) *Shipment on contracts shall be guaranteed by the Seller to arrive at final destination, cool, sound and sweet, and free of objectionable extraneous material, with the following exception: When shipments are ordered to a reconsignment point, the seller shall not be responsible for condition at final destination unless shipments are ordered forward from such reconsignment points within 48 hours after arrival, and in no case shall*

the seller be responsible for condition at final destination if a second reconsignment or diversion is made." [Emphasis added.]

It was clear that the cars stayed at Brownsville, Texas, the first destination, for more than 48 hours and Mena never officially rejected the cars until they reached their third destination.

Based upon the fact that the USDA/FGIS grade certificate issued at origin stated that the cars were check-loaded and check-weighed and contained the statement, "Stowage area examined," the arbitrators also found that CSC loaded the beans in proper railroad equipment for a movement that normally takes less than one month.

In addition, the arbitrators determined that Mena's claim that the shipment should not have occurred without Mena's request had partial merit. The written contract provided for the shipment of two cars per week between June 26 and July 22, 2000. Four cars were shipped on Friday June 30. To comply with the contract, two of the cars should not have been shipped until three days later, at the earliest. Consequently, CSC was responsible for three days of demurrage on two railcars. Otherwise, pursuant to the contract, Mena had to accept the beans when shipped and to clear the beans for export through Brownsville, Texas. The arbitrators found that CSC made the beans and the proper shipping documents available to Mena for this purpose.

The Award

Therefore, it is ordered that CSC pay Mena the amount of \$332, which represents three days of demurrage on two railcars calculated at the rate of \$50 per day per car, plus interest at the rate of 8 percent from August 2000 through November 2001.

The arbitrators denied CSC's counterclaim of \$11,095 for the cancellation of the four railcars of beans that were not shipped under the contract. The counterclaim was rejected because CSC did not attempt to ship any more cars after the initial four railcars were shipped on June 30, and the shipment period ended on July 22, 2000. Feed Trade Rule 19(A) [*Old Feed Trade Rule 14*] clearly states that if the seller finds it is in default on the shipping schedule or contract shipping period, the seller shall notify the buyer "at once by telephone, facsimile or wire." CSC did not provide such notification to Mena until November 2000.

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

Guy Brady Jr., Chairman
General Manager
Vista Trading
Houston, Texas

Andrea Rodriguez
General Manager
Scoular De Mexico, S. de R.L. de C.V.
Guadalajara, Mexico

Joe Kramer
Vice President, Edible Bean Marketing
Star of the West Milling Co.
Frankenmuth, Mich.