

Arbitration Report.

As required in Section 8 (k) of the Arbitration Rules, your Secretary reports regarding Case No. 1411, Bradley & Baker, 155 East 44th St., New York, N. Y., Plaintiff, and The Transit Grain Company, Fort Worth, Texas, Defendant.

This case pertains to a contract between the two parties, dated May 10, 1946, covering 25 carloads of milo, shipment 5 carloads each month, August through December, inclusive. The price of the milo was to be the market price at Fort Worth, Texas, prevailing at time of shipment, but in no case to be lower than \$2.35 track, Texas shipping points. The dispute arose in the pricing of the cars shipped during October. Evidence submitted indicated the 5 cars for August were cancelled by mutual agreement, and the 5 cars for September were set forward to shipment in October.

The Plaintiff contended that the Defendant did not fully adhere to the terms of the contract on shipment of 9 carloads of milo during October on the basis that the contract provided that the milo was to be priced by the Defendant on the dates shipped rather than at the price agreed upon by virtue of interchange of telegrams between the two parties. On the other hand, the Defendant contended that the price of the 9 carloads of milo shipped during October was definitely established by the interchange of telegrams. On October 17, 1946, Defendant telegraphed the Plaintiff offering to ship 10 cars of milo at \$2.65 per hundredweight, track, Texas shipping points for October shipment. The Plaintiff answered the following day, October 18, by telegram, acknowledging the telegram of Transit Grain Company and instructing it to ship the 10 cars of milo. The evidence submitted did not show any exception taken by the Plaintiff to the price, or to October shipment. The Defendant, by letter on October 18, confirmed the interchange of telegrams.

From October 24, through October 31, 9 carloads of milo were shipped and invoiced by Transit Grain Co. at \$2.65 track, Texas origins. Bradley & Baker accepted two cars at \$2.65, but contended that the market on the remaining 7 cars on dates of shipment should have been 2 cars at \$2.50; 1 car at \$2.42 and 4 cars at \$2.30 (this latter price 5¢ per hundredweight under their contract agreement).

The committee considering this case was composed of Mr. L. E. Howard, Chairman, The Derby Grain Company, Topeka, Kansas; Mr. Ray C. Ayers, Ray C. Ayers & Son, Slaton, Texas, and Mr. Cecil C. Blair, Norris Grain Company, Duluth, Minnesota. The amount involved was \$2,079.34, representing the difference between the price of \$2.65 per hundredweight as covered by the interchange of telegrams and the various prices on the 7 carloads as outlined above by Bradley & Baker, based on dates of shipment, basis market price at Fort Worth.

The committee rendered a unanimous decision in favor of Transit Grain Company and denied the claim of Bradley & Baker. Notwithstanding the provisions of the original contract, the committee held that the Defendant made a definite proposition to the Plaintiff in their exchange of telegrams on October 17 and 18, 1946, naming a price of \$2.65 per hundredweight, track Texas points for October shipment. Defendant further confirmed this exchange of telegrams in its letter of October 18, 1946.