

**"THE SECRETARY REPORTS—"**

*(In this space appear regularly all official Association documents)*

ARBITRATION REPORT

As required in Section 8 (k) of the arbitration rules, your Secretary reports regarding case No. 1418, Simpson, Romeiser, Evans Grain Company, Salina, Kansas (now Simpson, Evans & Laybourn Grain Company), Plaintiff, and Central Feed Supply Company, Chicago, Illinois, Defendant.

In September, 1945, plaintiff purchased 90 tons of gray shorts from defendant, delivery 30 tons in February, and 60 tons in March and April of 1946. In November and December, 1945, plaintiff purchased 120 tons of 50% meat scraps from defendant for delivery during January, 1946. Plaintiff valued total purchases at \$3,945.00 and seeks to collect that amount plus interest at 4% from May 29, 1947, as damages from defendant for non-delivery and non-fulfillment of contract.

Plaintiff points out in evidence submitted that numerous attempts were made to enable defendant to fulfill contracts such as substitution of cracklings for meat scraps and extensions of time for delivery. Defendant claimed it was unable to ship the gray shorts because its seller never shipped, and that plaintiff refused to accept cracklings in substitution for meat scraps.

The committee considering this case was composed of Paul Gebert, The Lincoln Mill, Merrill, Wisconsin, Chairman; Walter F. Toberman, Toberman Grain Company, St. Louis, Missouri; and Walter F. Oesterling, P. J. Oesterling & Son, Butler, Pa.

The decision of the committee follows:

The above entitled matter having come on for hearing before the Arbitration Committee of the Grain & Feed Dealers National Association this day, and after hearing all of the evidence presented in said matter, based on letters and affidavits,

NOW, THEREFORE, YOUR COMMITTEE FINDS:

1. That there is no sufficient evidence warranting this committee to find that the said defendant is in any manner obligated to the said Simpson, Romeiser, Evans Grain Company in the sum of \$3,945.00.

NOW, THEREFORE, the application of the said Simpson, Romeiser, Evans Grain Company of Salina, Kansas, is hereby dismissed.

The plaintiff appealed the decision of the Arbitration Committee and the decision of the Committee on Arbitration Appeals follows:

There is no dispute regarding the number of tons of either the shorts or meat scraps, nor any other details of the contracts, themselves. These five contracts were entered into in September-November-December of 1945, at which time OPA regulations fixed the price for these commodities and allowed a fixed markup. The question involved is when the contracts should have been closed. Trade Rule No. 15, Sections (d), (e), (f), and (g) requires both the seller and the buyer, in the event of breach of contract, to act promptly in closing the contract. Neither the plaintiff nor the defendant took the positive action required by our rules. These rules do not contemplate, nor permit a contract to be indefinitely extended, particularly at a time when war regulations, or the discontinuance of war regulations, might entirely change conditions under which contracts were entered into.

It is the unanimous opinion of this committee that the plaintiff had a right to demand fulfillment of these contracts; that had the contracts been fulfilled plaintiff would have enjoyed his markup of 50¢ per ton, which, on the 210 tons, amounts to \$105.00. Plaintiff is awarded this amount.

Trade Rule No. 15, Sections (b) and (g) allow, in addition to actual market differences, the expenses incurred in an endeavor to get contracts fulfilled. Plaintiff is also awarded, for telephone, telegraph and expenses of that kind, \$25.00; total award of 130.00. Defendant is charged with the expense of this arbitration.