

## "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. 1430, Lattin Company, Inc., Buffalo, New York, plaintiff, and Greutker, Inc., Buffalo, New York, defendant.

This case concerns the sale of January 8, 1948, of 120 tons of soybean meal for January shipment, with destination directions to be given later, by the Lattin Company, Inc., to Greutker, Inc. On the eighth of January Greutker, Inc., furnished shipping instructions to the Lattin Company, Inc., to ship a car to Kasco Mills, Inc., Waverly, New York.

A letter offered in evidence written by the agent of the Baltimore and Ohio Railroad at Ivorydale, Ohio, indicated that although the car of soybean meal was shipped from Decatur, Illinois, on January 26, it did not come under the control of the Lattin Company, Inc., until February 4. The original billing from Decatur was to Cincinnati, Ohio, and the car was delivered to Kentucky Chemical, Inc., at its plant at Elmwood Place. The car was not unloaded. On February 4, a new bill of lading was exchanged for the original, and the car then became a shipment to apply on the contract of the Lattin Company, Inc.

The Lattin Company, Inc. contended that inasmuch as the car to apply on the contract had been shipped within the contract time Greutker, Inc. should have accepted the car. Greutker, Inc. in defense, pointed out that the car to apply on the contract did not come into possession of the Lattin Company, Inc., until February 4, and therefore, did not constitute a delivery in accordance with the terms of the contract.

The committee considering this case was composed of Cecil C. Blair, Chairman, Norris Grain Company, Duluth, Minnesota; R. F. Gunkelman, R. F. Gunkelman & Sons, Fargo, North Dakota; and Paul Gebert, Jr., The Lincoln Mill Inc., Merrill, Wisconsin. The committee rendered an unanimous decision in favor of Greutker, Inc., as follows:

After examining all of the evidence submitted by both the plaintiff and the defendant bearing upon the question of the delivery of one car of soybean meal to the Kasco Mills, Inc., we are of the opinion that the shipment of this car did not properly constitute a 40 ton car shipped during the month of January to apply on this sale, under Rule 14 (d).

It is noted that the car used was a 30 ton car which was diverted from the Kentucky Chemical, Inc., plant and that the papers covering it did not come into the possession of the Lattin Company until February 4. The buyer of this car has a perfect right to expect a 40 ton car shipped during January and coming direct to his plant. Apparently no car was available or it was overlooked and this car was diverted from the Kentucky Chemical Company, Inc., but at too late a date to qualify on the contract. Naturally Greutker, Inc., could not accept the car as long as his principal, the Kasco Mills, Inc., had refused it.

The responsibility is upon the firm of Lattin Company, Inc., to make proper delivery and in this case a proper delivery was not made.

In our opinion, the Lattin Company, Inc., have not fulfilled the contract and for this reason we decide in favor of Greutker, Inc.