

CASE NO. 1452

PLAINTIFF - CARGILL, INC, FORT WORTH, TEXAS

DEFENDANT - C. L. GREEN MILLING CO, WINTERS, TEXAS

The first committee drawn from the members of The Arbitration Panel to consider this case was composed of Mr. Gunnard Johnson, Wolcott and Lincoln, Inc, Ka City, Mo, Chairman; Phil Legge, Uniondale, Ind. and L. E. Howard, The Derby Grain Co Topeka, Kans. The decision of this committee was appealed and the decision of The Committee on Arbitration Appeals follows:

The question involved in this case is whether or not a car of corn was on Sept. 10, 1948 by Cargill, Inc. to C. L. Green Milling Co., for Oct. shipment, was shipped within contract time. In Oct. 1948, the last day of the month fell on Sunday. The amount involved is \$395.00 and the rules governing this contract are Grain Trade Rules 8 and 31.

The third paragraph of Rule 8 reads: " Grain to apply on a sale for shipment must be actually loaded, and billing instructions must be furnished to the authorized agent of the carrier in accordance with the custom then in vogue at the shipping point."

Rule 31 requires that: "Bills of lading attached either to invoices or to drafts shall be original and negotiable, and in conformity with the specifications of the contract on which the shipment is to apply and must be dated and show the signature of the carrier's agent within the life of the contract."

This car of corn was loaded and inspected Friday, Oct. 29. Slip-bill was furnished the railroad Saturday morning, Oct. 30. The bill of lading was dated Monday, Nov. 1, and the transit billing, covering the car, was stamped by the Western Weighing and Inspection Bureau on Monday, Nov. 1. The car was not received by the Missouri Pacific Railroad Company until Nov. 3 and did not move until Nov. 4.

Plaintiff has contended that previous arbitration committees have held that the date of bill of lading was not controlling in determination of date of shipment. These rules do not permit a shipper to load and bill a car, then hold it beyond expiration of contract date, for inspection or for any other reason, nor do they permit a shipper to delay a car beyond expiration of the contract date by failure to bill properly. What they do require, and what previous arbitration committees have required is that the shipper shall perform every necessary act, within his power, to insure the movement of a car within contract time.

This Committee is unanimously of the opinion that Plaintiff did not meet that test and confirms the holding of the original Arbitration Committee. This Committee assesses the expense of this arbitration against the Plaintiff.