CASE NO. 1486

Plaintiff: The Neumond Company, St. Louis, Mo.

vs


Nature of Dispute: Which Trade Rules were applicable in the replacement of a car of De-
hydrated Alfalfa Meal, original car failing to meet standards of the
contract.

This case was brought under the Feed Trade Rules of the Grain and Feed Dealers National
Association and is so decided.

The plaintiff states in his Exhibit #1, paragraph #2 relative to the car first shipped on
the contract under consideration: 'that you (the defendant) had the right to refuse same
which you did.' Thus, the question then becomes: Is the defendant required to accept the
replacement car of alfalfa meal for the car refused on May 17 at the price stipulated in
said contract?

Next, this brings the question down to: Does Rule #13 or #14 of the Association's
Feed Trade Rules apply?

It appears to us that Rule #13 was written to cover feeds, particularly wheat mill feeds,
arriving at destination out of condition—either caked, musty or mouldy. It seems quite
plain that it was not intended to cover deficiencies in guaranteed analysis. So we do not
think Rule #13 applies in this case.

Rule #14 defines the liability and the rights of both buyer and seller in the event of
breach of contract. In this case the plaintiff contracted to deliver a car of dehydrated al-
falfa meal with a specific guarantee of 17% protein and 100,000 units of Vitamin A on ar-
rival under immediate shipment terms. The plaintiff accepted responsibility for deliver-
ing a product which would fulfill the specifications of the contract, and to which both buyer
and seller had agreed upon. This is a question, therefore, of analysis on arrival and not
of condition on arrival.

The plaintiff admits that the car in question was shipped and tendered to the defendant
without a laboratory check by either the shipper or the plaintiff to insure delivery of a pro-
duct meeting the contract's specifications. The plaintiff took that chance on his own res-
sponsibility and so the defendant cannot be considered liable.

The defendant exercised his right to refuse the car and agreed to accept a replacement
car only at a lower price than in effect. He was not obligated to do this as the contract had
been breached by the plaintiff and the defendant could have exercised his right to cancel
and buy in elsewhere. The question of what the defendant might have done on a rising mar-
ket is irrelevant because paragraph 1, 2 and 3 of section (a) (Buyer's Liability etc.) of
Rule #14 cover that contingency.

The defendant in agreeing to accept a replacement car only at the lower market price
at which he could have bought elsewhere was within his rights under Rule #14.

"We, therefore, find for the defendant with the plaintiff to pay any costs of the Arbitra-
tion." James A. Gould, Chairman; Arthur B. Fruen; Paul C. Knowlton.