

Arbitration Decisions

October 29, 1969

Decision of the Arbitration Appeals Committee
Arbitration Case No. 1506

PLAINTIFF: Bartlett and Company, Kansas City, Missouri

DEFENDANT: The Pillsbury Company, Minneapolis, Minnesota

The dispute between Bartlett (buyer) and Pillsbury (seller) arises from the application of two barges of corn on previously executed contracts between the parties, which designated Interior Grades and Destination Weights.

There is general agreement on contract terms, amendment to extend shipping time and application of one barge, the grade on which did not meet original contract specifications.

Detail regarding the barges involved is as follows:

CNC 45 loaded Clinton, Ia. December 27, 1967.

CNC 197 B loaded Clinton December 28, 1967.

Both originally billed New Orleans January 4, 1968.

Both inspected Clinton February 8, 1968.

Bills of lading dated February 9, 1968 changing destination to Myrtle Grove, La. and carrying notation "issued in exchange for B/L dated 1-4-68".

Cleared from Clinton March 2, 1968. Movement from Clinton delayed because of ice conditions.

Arrived New Orleans March 17 - arrived Myrtle Grove March 24.

Federal Appeal grade issued April 1, 1968 indicating deterioration.

Unloaded Myrtle Grove April 5, 1968.

Bartlett sustained a loss in making application of subject barges to another buyer and contends the loss was caused by Pillsbury's failure to make a full disclosure of loading dates; (the unusual length of time between loading and inspection date of February 8); that they were misled by a TWX message of tender into believing corn was loaded and inspected on or near the February 8 date; that they were unaware an exchange bill of lading had been issued; that had they known actual loading dates, tender would have been refused or they would have had choice of options for their protection; that tendered documents did not comply with trade rules.

Pillsbury contends buyer was aware of river conditions; that they had no reason nor intent to mislead; that bills of lading tendered clearly showed them to be "exchange" ladings indicating loading at an earlier date; that tendered documents did comply in all respects; and that deterioration was caused by delay in handling at destination.

The National Arbitration Committee ruled for Pillsbury, and Bartlett is appealing that finding.

The members of the Appeal Committee carefully studied individually the evidence submitted and reviewed the finding of the National Arbitration Committee. Grain Rules 5 and 8 and Barge Rules 6 and 7 were applied in reaching decisions.

On August 7, 1969 the Committee met by conference telephone to discuss points on which the Committee differed. The Committee agreed the inspection certificates were valid documents under the rules, but disagreed on the bills of lading.

The minority opinion finds for Bartlett, reversing the decision of the National Arbitration Committee, for the reason that a full disclosure of the early loading was not made prior or subsequent to tendering the subject barges on contract. Bartlett was therefore left with an unknown peril, as well as being denied the opportunity to fully evaluate the risk.

The majority opinion agrees with the finding of the National Arbitration Committee which ruled in favor of Pillsbury on the grounds that there was ample opportunity to reject the tender; there was a clear record of issuance of exchange bills of lading; that Bartlett accepted and paid drafts without protest. In accepting and paying, Bartlett waived his opportunity to reject the application.

Therefore, the Arbitration Appeals Committee by majority vote finds for Pillsbury, affirming the decision of the National Arbitration Committee.

Arbitration Appeals Committee of the Grain
and Feed Dealers National Association

/S/ R. M. Scoular, Chairman
R. E. Barinowski
Madison Clement
James F. Mullin
Loren Johnson

Dated August 20, 1969