



Arbitration Decision

National Grain and Feed Association

September 6, 1990

Arbitration Case No. 1667

Plaintiff: Kinsho International Corp., New York, N.Y.

Defendant: A.R. Smith & Co. Inc., Bellevue, Wash.

Statement of the Case

Kinsho International Corp. purchased from A.R. Smith & Co. Inc. 300 metric tons (plus or minus 20 percent) of corn cob meal, of "fair average quality," meal sized through No. 10 mesh sieve screen on May 19, 1989. A.R. Smith & Co. Inc. had no experience in producing corn cob meal and corresponded with and sent samples to Kinsho International Corp. over the several months before the contract was executed.

Kinsho International Corp. rejected the shipment because it believed it did not meet the contract specifications of "fair average quality," was not similar to the samples submitted and contained too high a percentage of fines, sand and silica impurities. Kinsho International Corp. requested an award of \$124,343.92, plus costs, interest and attorney's fees.

A.R. Smith & Co. Inc. denied Kinsho International Corp.'s claim that it did not meet contract specifications and requested payment of its costs and attorney's fees of \$4,136.00.

The Decision

The arbitrators ruled that A.R. Smith & Co. Inc. complied with the terms of the sales contract

and delivered fair average quality corn cob meal sized through a No. 10 mesh sieve screen. The arbitrators believed that Kinsho International Corp. should have been aware of the quality of the delivered product based upon the several months of correspondence, conversations and samples exchanged between the two parties. There was no specific percentage of impurities allowed stated in the contract. Nor was a sieve size stated to define the lower end of acceptability. Thus, the arbitrators denied Kinsho International Corp.'s claim and awarded A.R. Smith & Co. Inc. its claim of \$4,136.00.

Submitted with the consent and approval of the arbitration committee, whose names are listed below:

Patricia Collins, Chairwoman
Didion Inc.
Johnson Creek, Wis.

Jim Timberlake
Timberlake Sales Inc.
Springfield, Ill.

Dwayne Leedy
The Andersons
Maumee, Ohio