



National Grain and Feed Association

Arbitration Decision

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August 11, 2011

Arbitration Case Number 2503

Plaintiff: South Dakota Wheat Growers Association, Aberdeen, S.D.

Defendant: Canadian Pacific Railway, Winnipeg, MB

Statement of the Case

South Dakota Wheat Growers Association (SDWG) submitted a bill of lading to Canadian Pacific Railway (CP) to haul 26 cars of hard red winter wheat from Highmore, S.D., to a wheat flour mill in Kansas City, Mo.

Pursuant to industry practice, SDWG forwarded to the buyer the barrier seals and seal numbers on each individual rail car. On Nov. 12, 2009, the cars were placed at the mill. Approximately two hours after placement at the mill, the buyer notified SDWG that one of the cars was being rejected because only two of the five top hatch seals were intact. CP also was notified on the same day by SDWG's of its intent to file a claim. CP responded by generating a freight claim exception report and sent an e-mail copy to SDWG. The following day, SDWG submitted a completed claim.

Between Dec. 4, 2009 and Feb. 23, 2010, various correspondences took place between the parties. Ultimately, CP denied the claim based upon the following grounds:

- ▶ Non security-type seals were used instead of barrier seals.
- ▶ Arrival condition was not confirmed at destination (placement) to support the alleged "potential" contamination, resulting in an unwarranted rejection of the car to the carrier.

- ▶ SDWG willfully waybilled and released the railcars to move without the barrier-type seal necessary to be consistent with its customer's policy.
- ▶ SDWG did not participate in seal anomaly root cause or product resolution that would mitigate the potential loss.
- ▶ Twenty-six railcars were moved in the distribution chain from SDWG to destination; however, only three seals apparently were missing (out of presumably 130 seals). There was no evidence to support the assertion that the seals were broken, as no missing seals were found near the railcar. CP also indicated that the railcar arrived with top hatches closed and doors mechanically latched as designed, to maintain environmental integrity. There were also no tell-tale indicators of entry reported or signs of contamination.

On Feb. 12, 2010, CP indicated it still was reviewing the claim, but would begin the salvage process on the car to mitigate further loss. Thereafter, the product was salvaged and proceeds of \$16,401.92 were remitted back to SDWG.

SDWG requested that the full amount of the claim be honored based upon the lading value of \$22,172.84, plus arbitration fees of \$653.78 and interest.

The Decision

The arbitrators reviewed the submissions in this case utilizing the governing freight damage tariff, which both parties agreed was CARH 6000 Item 5040.

The first issue concerned whether the plastic seals used were strong enough to protect the cargo, or whether stronger barrier seals should have been utilized. Item A of CARH 6000 Item 5040 stated: *“It is the sole responsibility of the shipper to determine the type of protection necessary to protect the cargo. No railroad shall be liable for any shortage or damage of goods unless seals or security devices placed upon the car at origin are removed or broken before receiver is tendered the car.”* The arbitrators noted that the tariff item did not specify what type of seal shippers should use to protect cargo.

The second issue considered by the arbitrators was whether the shipper met the information-reporting guidelines regarding seals. The arbitrators determined that SDWG submitted the seal information on the bill of lading and that under the tariff, SDWG was not required to supply an affidavit or other

information. The seal information was provided in numerical order and did support the premise that all of the seals were applied properly and in order.

The third issue the arbitrators considered was whether the receiver actually proved contamination and whether it needed to prove contamination to reject the car. Again the applicable tariff, item B, only required that, *“a cargo loss claimant must be able to provide documentary evidence that the required seals were applied properly and immediately after completion of loading....The seal number(s) on the original bill of lading or shipping instructions must be provided in any claim application.”* The arbitrators concluded that the documentary evidence supplied by SDWG through the bill of lading process satisfied this requirement.

On these grounds, the arbitrators found in favor of SDWG in that it fully complied with the governing tariff CARH 6000 item 5040 and had the expectation that its claim would be honored.

The Award

The arbitrators found in favor of South Dakota Wheat Growers in the amount of \$22,172.84 minus \$16,401.92 (salvage value) + \$653.78 (arbitration fees), resulting in a total of \$6424.70 owed to SDWG. Interest fees from the date of the claim (Feb. 23, 2010) will be awarded only if the defendant fails to pay this claim within 45 days of notification of this decision.

Submitted with the unanimous consent of the arbitrators, whose names appear below:

Tim McNulty, *Chair*
Director of Feed Grains
CSX Transportation Co.
Jacksonville, Fla.

Mark Huston
Director of North American Transportation
Louis Dreyfus Commodities
Kansas City, Mo.

Charlie Threlkeld
General Manager of Transportation
CGB Enterprises Inc.
Mandeville, La.