

Arbitration Decision Brief: When Verbal Deals Fail and Paper Trails Matter

Dispute over reduced payments on several invoices due to the produce being incorrect in size, count, or in deteriorated condition.

The Fruit and Vegetable Dispute Resolution Corporation (DRC) has developed a series of articles summarizing past arbitration decisions. These articles will help members understand how the DRC Dispute Rules and Standards (R&S) apply in a dispute.

The DRC Dispute R&S states that all DRC arbitrations are private and confidential. As such, the names of all parties, including arbitrators and companies, are not included. A reminder that the DRC's sole role is to administer the arbitration process; the DRC does not participate in any hearings. Therefore, this summary is based solely on the arbitrator's written decision and may not reflect important information shared with the arbitrator through written briefs or verbal testimony.

ABSTRACT

The arbitration decision addresses a dispute between parties from Mexico and Canada. The dispute began when Respondent issued short payments for various transactions, claiming that some shipments related to those transactions had problems, such as poor quality, incorrect product sizes, or incorrect quantities. The Claimant disagreed with these claims.

The arbitrator concluded that there was not enough evidence to support the Respondent's arguments for reducing payments on certain transactions.

This summary provides an essential overview of the arbitration decision and its implications for international commercial disputes.

CASE: DRC File #18232 – Parties Domiciled – Mexico and Canada

SUMMARY OF FACTS

From June 2005 to August 2005, the Claimant sold a series of loads of mangoes to the Respondent.

The Claimant initiated this arbitration case because he believes the Respondent had not fully paid for these loads as outlined in the invoices and still owes him a total of US\$9,544.00. Additionally, he claims that the payments he received were late, which entitles him to interest. He is also seeking reimbursement of US\$600.00 for the costs associated with filing this claim.

The Respondent disputes these allegations. In his Statement of Defence, he asserts that two of the loads were short in quantity, that the wrong sizes were shipped for two other loads, and that one load was compromised by excessive heat, leading to quality loss. As a result, he has made payments to the Claimant that reflect the actual value of what he received.

It seems that the two parties have engaged in extensive telephone conversations about the various loads at different times. However, neither party has documented any verbal agreements with written evidence, such as signed faxes, resulting in confusion about what was discussed and when.

SUMMARY OF ARBITRATOR'S ANALYSIS AND REASONING

The two parties hold differing opinions regarding the facts related to the various loads. Some loads have one alleged issue, while others present a different problem. Since the claim pertained to payments for each invoiced load, the arbitrator evaluated the merits of each load individually.

To summarize the arbitrator's findings, this overview will only address the disputed transactions. For a complete analysis, please refer to the full arbitral decision.

It is not disputed that all of the produce came into the possession of the Respondent.

Invoice 655. The Respondent includes this invoice in his Statement of Defence. However, the Claimant in his Reply to Statement of Defence to Statement of Claim correctly states that this invoice was not included in the original claim.

The Arbitrator cannot rule on any matter that has not been claimed in the original claim. Therefore, this invoice will not be considered in making this decision.

Invoice 671. PO 383. Net to Pay = US\$ 10,444.00.

This PO clearly states that the order is for 'Tamanos: 10's y 12's.' (Sizes: 10's and 12's). Furthermore, on the fifth line down, it states, **Nada de 14's por favor.** (No 14's please).

Yet the Claimant actually loaded 3,840 cases of 14's, only 576 cases of 12's, and no size 10's at all. The Claimants' own manifest/packing list for this load confirms this.

The Respondent claims that they could only move this product by giving their own customer a price break of US\$0.25 per case, as shown by their Exhibit I invoice. The Respondent also claims to have negotiated this with the Claimant's sales representative at the time.

The Claimant, however, still invoiced the Respondent for the full amount of a load of the ordered sizes.

In his defense the Claimant claims that he sent the load because he had an agreement with the buyer for the Respondent. However, he has not submitted any documentary evidence of this, such as a signed fax or an email. The Claimant, as the moving party, has the burden of proving their position.

He submitted a manifest for a different load of mangoes containing size 14's sent previously on 6/17/05, and claims that the respondent paid full price for them.

Whatever may or may not have been done previously cannot overrule a clearly stated Purchase Order for the load in question. Only a subsequent agreement between both sides can do this. There may have been such an agreement; there may not. If there was, it was apparently verbal, and the Claimant failed to get this in writing.

The Respondent did pay the full amount invoiced for the correct sizes he received and paid a lesser amount for the rest based on the amount received from his customer.

It is this arbitrator's opinion that, based on the evidence laid before him, the amount owed to the Claimant from the Respondent is the amount invoiced minus the discount given to the customer of US\$960.00, as the Respondent has argued.

The amount to be paid for this invoice stands at US\$9,484.00.

Invoice 692. PO 408. Net to Pay = US\$10,799.00.

The Respondent states that they did not receive the full load of 4224 cases. Instead, he claims that the truck contained only 3840. In support of this, he has submitted as Exhibit B, a Straight Bill of Lading-Short Form that was amended at the border by the US broker for the Respondent.

This is not as clean cut as it might appear. First, this document was apparently filled out after the load crossed the border as it states that XX Transport did receive 4224 cases on July 9 at Laredo Texas, US. Not only was the document completed in the U.S., but it was also done two days after shipment by the Claimant. The handwritten notes of the broker were thus added later.

The Claimant states that there is nothing to tie this document to the load that was shipped except a handwritten invoice number written much later. However, the date of the original completion of the document and acceptance by the trucker make it unlikely that it is a forged document.

The Respondent has also submitted his own invoice to his client, selling the reduced amount of only 3840 cases. However, this can be discounted as this happened nine days after shipment and does not help decide what was actually loaded.

There is no record from either party of any communication about this matter between them.

The question, therefore, hinges on what terms were agreed to as to FOB.

The Claimant makes the statement. "Our sales always were FOB Laredo, Mexico.". The PO written by the Respondent submitted for other invoice disputes also states that the load is "U.S. FOB Laredo, Mexico". There is no reason to doubt that this agreement was any different. Thus, both parties agree on the FOB.

Thus, once the load had been accepted by the Respondent, it was his, and after it had crossed the border into the U.S., it most certainly was his. It was accepted by XX Transport. At this stage, the Respondent had it checked by his broker, who claimed that it was short.

If the Respondent had the load checked by an authorized inspector and found it short, the situation would be different. The inspection by a broker and paid for by the Respondent is not sufficient. What this does is warn the receiver that there is a shortfall and to get ready for a formal inspection at the end of the journey.

That the load eventually reaching Canada did contain only 3840 cases, the arbitrator is willing to believe. (There is also a discrepancy in the load weight). However, what happened to the others accepted by the carrier is not explained. The Respondent gives no mention about filing a claim against the carrier.

Therefore, the arbitrator must rule that the Respondent is responsible for the invoice of US\$10,799.00.

Invoice 702. PO 412. Net to Pay = US\$13,717.00.

In this case, the Respondent claims that the product, 4224 cases of mangoes, was over heated and that there were maturity issues on arrival.

For documentary evidence of this he has submitted another Straight Bill of Lading that has been noted by the broker as being at a temperature of 68-73F as opposed to being pre-cooled and to arrive at the border at 50F, as was clearly stated on the PO.

The Respondent claims that the reefer was not running at all when it arrived at the border and that the temperature inside the trailer was over 100F. He also claims that the Claimant was notified immediately, as this condition did not comply with the PO and that this was to be treated as a truck claim with the Claimant making the claim against the trucking company.

The Respondent furthermore claims that he notified his customer and that "It was understood by all parties involved that the price would be determined after sale since we would not accept responsibility for the product's maturity upon arrival, which is why the bills were signed "UNDER PROTEST" at the border".

Respondent also submitted pictures to show "maturity issues".

The Claimant accepts that he was notified of the problem, but states that the agreement was "if his clients have some problems upon arrival in Canada, he will make a CFIA inspection."

He also casts some doubt on the authenticity of the Straight Bill of Lading as it was marked with the invoice number sometime later. However, there is little reason to doubt the reality of the Bill of Lading as modified at the border. It is dated two days after the loading date, and it states the correct number of pallets and cases, etc.

Again, this problem is compounded by the lack of record keeping by both sides regarding what agreements were or were not made. An “understanding” fails to meet the level of proof to change a contract if not corroborated by documentary evidence. This is especially true when it is claimed that a fixed price sale was changed to an open price sale.

However, there is one point that is paramount. The inspection. The Claimant claims that he asked for one. The Respondent never denies this. He must have known, however, that to have any legal backing for his claim of damage he must have such an inspection made. This is just normal practice in the industry. It is clearly written out in the DRC Trading Standards, Section 10.

Furthermore, if it is correct that there was to be a trucking claim (regardless of what party was to make it), an inspection should have been made for use in supporting that claim.

The Claimant makes no reference to having agreed to make this claim. In fact, the Respondent admits to having paid the trucker US\$1,700.00.

To make a claim based on an FOB Laredo, Mexico (Respondent’s PO), an inspection is a requirement.

Although the Respondent argues that an inspection was not made in order to keep the costs down as per an “agreement” with the Claimant, he has not supplied evidence of this.

It is also hard to understand why he did not make such an inspection when he had just undergone several disputes with the Claimants during the past two weeks.

To Pay US\$13,717.00

Invoice 727. PO 426. Net to Pay = US\$13,141.00

This invoice is in dispute, very similar to that of invoice 671 discussed previously. Again, the PO is very clear as to what size product was ordered. Again, the load sent was not what was ordered. Again, the Respondent claims that the eventual outcome was discussed with the Claimant.

It is not necessary to repeat all of the arguments and facts again.

The amount to be paid stands at US\$13,141.00

Claims for interest: The Claimant is seeking interest because of the extended length of time it has taken the Respondent to pay for the amounts invoiced. The Claimant states that he expected payment within 30 days. However, he provides no documentation for this.

Upon examination of the balances owing, Exhibit A, it does appear that there are cases where the payments were delayed, in at least one case by more than 60 days.

The Respondent gives no answer to this at all in either of his replies.

However, there are mitigating circumstances here. The Respondent paid only what he thought he had to, based on his concept of the situation. In his opening Statement of Defence he writes, *“we were quite surprised to receive a claim from the Claimant as these issueswere also settled, finalized and closed before the start of this mango season.”*

As the totals of the payments due have now changed again due to these rulings, and as the Respondent did make periodic payments, it is now impossible to calculate what interest would be due.

ARBITRATOR'S SUMMARY DECISION

The total amount owed for the invoices listed is US\$191,714.00. The Respondent has already made a payment of US\$183,710.00, leaving an outstanding balance of US\$8,004.00.

After reviewing the documentation submitted by both parties, the arbitrator made the following decision:

The Respondent is required to pay the Claimant a total of US\$8,004.00 for the outstanding invoices.

The claim for interest has been denied. Additionally, the Claimant's request for an arbitration fee of US\$600.00 has been granted.

The Respondent must pay the Claimant a total of US\$8,604.00 within 30 days of this award.

DRC COMMENTS

The DRC's goal is to help members prevent disputes and manage them efficiently if they do happen. This case highlights several recurring issues within the produce industry that members should keep in mind.

This arbitration case underscores several important points:

1. Written Confirmation Is Essential—Especially After Verbal Negotiations

This is a major issue in the case and in the industry. Here, the Respondent cited agreements that modified the contract terms from a fixed price to a price after sale (PAS), as well as an agreement to waive federal inspections to cut costs when problems arose with the condition of the received product. However, the Respondent claimed that all these agreements were made verbally and lacked written confirmation.

Keeping written records of verbal negotiations is crucial. Most negotiations in the produce industry happen over the phone, where essential transaction details are discussed or altered, including contract terms (e.g., FOB, Fixed Price, PAS) and product

specifications (e.g., quantity, quality grade, size). Though verbal agreements can be contractually binding if both parties understand and agree to the terms, disagreements about what was verbally agreed upon place the burden of proof on each party for their respective claims. Therefore, it is vital to keep written records of all communications. For any topic discussed verbally during a transaction, it is advisable to follow up with an email or text message confirming what was discussed.

2. Follow the DRC Good Inspection Guidelines

It is crucial that, among DRC members, a federal inspection be requested within 8 working hours (excluding Sundays and holidays) of receiving a shipment when a suspected issue with the product's quality, size, or condition is noticed. According to DRC trading standards, a receiver must advise the shipper in writing that the load arrived with certain issues. Notes from brokers or buyers are not substitutes for a formal inspection.

In this case, the Respondent failed to request a federal inspection, claiming that an agreement existed to forego that step to save costs. Since the Claimant denied agreeing to such an arrangement and there was no written record or federal inspection confirming that the received product did not meet the contract terms, the arbitrator ruled that the Respondent was responsible for paying the full invoice related to these transactions.

3. Maintain Clear Contract Terms (FOB, PAS, Fixed Price, etc.)

A clear understanding of contract terms is crucial. Designations such as FOB determine when ownership and risk transfer, and any changes to pricing arrangements, must be explicitly agreed upon. Members should avoid relying on assumptions based on past transactions; each load is governed by the specific terms negotiated for that shipment.

If parties agree to modify terms—whether regarding size, pricing, or responsibility for inspections—those changes must be documented. Unwritten “understandings” rarely withstand scrutiny in a dispute.

4. Ensure All Disputed Transactions Are Included in the Initial Claim

Only transactions raised during DRC’s informal mediation process may be submitted to arbitration. The arbitrator does not have access to the informal mediation process. Therefore, it is up to the parties to ensure the arbitrator is aware of this issue. In this case, the arbitrator, rightfully so, decided to exclude an invoice that was not included in the informal mediation process. Members should carefully verify that all disputed invoices or issues are documented and submitted at the outset. As seen here, failure to include a transaction during informal mediation may prevent it from being considered later in the arbitration process. This step is essential to preserving a party’s ability to seek a full and fair resolution.

DRC encourages members to contact us early when challenges arise. Early documentation, timely inspections, and clear communication can prevent many disputes from escalating to arbitration.

5. Contact DRC Early for Guidance

Many disputes arise not from bad intent but from unclear communication or missing documentation. Members are encouraged to reach out to the DRC early—before issues escalate—to obtain guidance on best practices, trading standards, or appropriate next steps. Early communication, proper documentation, and compliance with inspection requirements can resolve concerns quickly and help preserve business relationships.

ADDITIONAL RESOURCES:

To access the full redacted arbitration decision, [click here](#).

DRC Trading Standards – [Section 10.2.\(b\)\(ii\)](#)

[DRC Dispute Resolution Rules](#)

Solutions Newsletter Articles:

[Meeting of the minds and burden of proof](#)

[Dealing with a bad load? Your options as a receiver](#)

[The Critical Role of Temperature Documentation in Produce Shipping](#)