

**ARBITRATION DECISION & AWARD UNDER
THE DISPUTE RESOLUTION RULES OF
THE FRUIT AND VEGETABLE RESOLUTION CORPORATION (DRC)**
November 11, 2015

DRC# 19418

Claimant: Caledon, Ontario, Canada **vs Respondent:** Richmond, BC, Canada

I, have been duly selected and confirmed by the Fruit and Vegetable Dispute Resolution Corporation (DRC) as Arbitrator in the above referenced case, hereby render the following Decision and Award. This decision is rendered under the mediation and arbitration rules as set forth by the DRC.

Both parties were members of the DRC at the time of these transactions, which binds them to these proceedings.

Both parties have been provided with exact copies of all correspondence in this arbitration proceeding and therefore the documents exchanged between the parties will not be quoted in complete detail.

Statement of facts: (SOF):

The Claimant is demanding payment for 5 freight invoices that involved the carriage of Respondent produce to the Respondent These transactions took place between January 23, 2015 and March 11, 2015.

Respondent is claiming that there was damage to one of the shipments.

Claimant has offered in an email a final settlement in the amount of a \$4,000.00 adjustment to their invoices to resolve the matter with immediate payment to be issued accordingly.

Claimant is seeking a total of USD\$30,700.00 which includes USD\$2,200.00 Arbitration Filing Fee's.

Respondent has not stated their losses in any manner. Respondent has simply stated "*we are attaching all the documents and also the emails which they were trying to negotiate with us and there trying to offer us small amount of money that was for settlement in this case. We are defending according to CFIA Report*".

Statement of Claim (SOC):

Claimant has supplied copies of signed bills of lading (BoL's) on all 5 shipments with the exception of the BoL for invoice #17294, dated January 28, 2015 that had a "Hi" temperature notation on arrival. There were no other notations on the signed delivery receipts for the other 4 shipments.

Statement of Defense (SOD):

Respondent's total SOD in this matter was quoted above in SOF, and I will repeat it again here. "*we are attaching all documents and also emails which they were trying to negotiate with us and they were trying to offer us a small amount of money that was settlement this case. We are defending according to CFIA Report.*"

Respondent has not accounted for any losses by virtue of an account of sale, dump or donation certificates and/or any other form of defined notice of loss.

Discussion:

The supporting documentation Respondent has submitted clearly references BoL#17771, which was signed completely clean and free of protest on arrival.

The BoL's do not specify a desired temperature while in transit but Claimant's invoices state maintain 35 degF.

The BoL with the "Hi" temperature notation was on a shipment in February 2015, BoL# 17294. Therefore, it appears that Respondent is claiming losses on a properly delivered shipment (BoL# 17771) and not on the shipment that arrived with high temperatures. (BoL# 17294)

Invoice# 17294 had 15 different items on the load. That being said, there are 4-CFIA Inspection certificates submitted by Respondent for only four of those items. Two certificates show normal pulp temperatures (Gai Lan 34.5 degF, Baby Bok Choy 34-35 degF). One certificate for Yu Choy Sum shows 37.2 degF. Recommended temperatures for this product must be assumed to be as stated on Claimant's invoices as 35 degF. Given that it is only warmer by 2 degF, one would not expect the damages to be too severe if any. The other certificate for Yu Choy Mieu shows 37.2-39.5 degF, which might be considered a little on the warmer side.

Three of the certificates show large percentages of "limp and pliable" and the 4th certificate shows "bruising and wilting". There are 4 varieties of vegetables highlighted as the damaged goods in question on the invoice from Respondent's supplier in Texas. The other 11 varieties have not been highlighted nor inspected as per the submitted documents.

The extent of the damages cited by CFIA on these 4 items could possibly be attributed to poor shipping condition at the time of shipment. In addition, the temperatures during shipment did not affect 11 items or 73% of the load.

Respondent is claiming on a load that was received without objections. Respondent did not claim on the load that was protested for "Hi" temperatures. Included in Respondent's documents is a temperature recording tape however temperature recording device with a serial number or tape number is not documented or identified to verify which shipment this tape belongs to. Further to that, the tape submitted reflects the in transit temperature of 32-33 degF.

There is however an email that Respondent submitted where it appears there had to be some discussions about temperature and losses.

Claimant submitted an email dated June 10, 2015 suggesting to split a \$22,136.00 loss three ways. There is no indication if this loss was USD\$ or CAD\$.

Furthermore, Claimant offered only a credit of \$3,000.00 (no mention of currency) and then finally raised the offer to \$4,000.00 with immediate payment of the balance due.

In my opinion, this email does not present itself as admission by Claimant to causing any damage, more so it represents a token of trying to resolve a problem and move forward.

Regardless of any of the commentary provided herein, Respondent is claiming on a shipment that was signed free and clear on arrival.

Respondent has not submitted any claim or documentation to substantiate claim, on the only shipment that had a notation as to "Hi" temperatures. Therefore I conclude there were no objections or consequences from that shipment arriving with "Hi" temperatures.

Decision and Award:

Without prejudice and with all due respect, I render my decision as follows:

Respondent must remit to Claimant the amount of USD\$30,700.00 within 30 days of the date of this decision.