



# BLUE BOOK SERVICES

845 East Geneva Road, Carol Stream, Illinois 60188-3520 USA

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## **ARBITRATION DECISION & AWARD**

**Blue Book File No. [REDACTED] ARB**

**April 22, 2016**

We, the members of Blue Book Services' Board of Arbitration ("Arbitrators") issue the following Decision pursuant to the Arbitration Agreement entered into by and between:

CLAIMANT: Shipper Packing, CA ("Shipper")  
RESPONDENT: Carrier, CA ("Carrier")

### **STATEMENT OF FACTS**

The parties to this arbitration have been provided copies of all presentations, supporting documentation and correspondence submitted to the Arbitrators; therefore, this material will not be quoted or referenced in complete detail.

On April 22, 2015, Claimant, Shipper, shipped 315 cases of iceless broccoli florets from California to its retail customer (Retailer) in Florida. Respondent, CARRIER, was hired by Retailer to arrange for the shipment of these 315 cases from Shipper, plus 200 cases of brussel sprouts, and 120 cases of vegetable trays. All three lots were picked-up as scheduled on April 22, 2015 from different shippers and different coolers in central and/or south central California.

Upon arrival at the retailer's facility on April 26, 2015, the retailer complained of warm temperatures affecting the broccoli and brussel sprouts, and rejected these products, while accepting the vegetable trays. Specifically, Retailer stated that these products were "REFUSED DUE TO NOT IN TEMPERATURE." Following the rejection CARRIER took the product to a wholesaler in Atlanta for salvage.

The bill of lading includes a temperature instruction directing the Carrier to maintain transit temperatures of 34-36 degrees. Yet, at destination photographs taken by the retailer suggest the broccoli was pulping between 47.8 and 56 degrees, well-above the recommended storage temperatures for this commodity, and well-above the retailer's product temperature specification of 32-43 degrees.

The portable recorder placed onboard this shipment recorded air temperatures in the mid-forties throughout the trip, with temperatures gradually increasing. Meanwhile, the temperature report from the reefer unit indicates return air temperatures generally ranged between 35-38 degrees.

Claimant, Shipper, seeks to recover its f.o.b. selling price for these 315 cases of broccoli, or \$9,166.50, plus transportation charges of \$3,340.15, which Retailer deducted from Shipper's account following the rejection. All totaled, Shipper seeks to recover \$12,506.65 from CARRIER.

Respondent, CARRIER, argues that Shipper has not shown the Carrier failed to properly maintain transit temperatures, and suggests that heat from the broccoli led to the rejection of the brussel sprouts and therefore seeks damages from Shipper of \$7,310.00, plus an additional \$2,127.94, which CARRIER suggests is owed to the shipper of the brussel sprouts.

### DISCUSSION

At the outset we note that at 40 degrees, broccoli florets have the highest respiration rate of any fruit or vegetable that is commonly traded in North America. According to the USDA's Handbook, *Protecting Perishable Foods During Transport by Truck*, at 40 degrees one ton of broccoli gives off 21,400 btu's in 24 hours. For the sake of comparison, one ton of head lettuce gives off just 3,650 btu's in 24 hours, while brussel sprouts give off 7,700 btu's during the same period.

Broccoli's extremely high-rate of respiration at 40 degrees is one of the primary reasons why traditionally (and still today) broccoli is packed in ice for long distance shipping despite the considerable expense. But today, as here, broccoli is also shipped without ice, in consumer bags. In our experience mediating disputes between vendors and Carriers, however, there is perhaps no commodity where proper precooling and temperature maintenance appears to be more important than with iceless broccoli florets. Indeed, it may not be possible for a truck to adequately cool this product once pulp temperatures start to rise because the increased respiration creates additional heat which, in turn, fuels more respiration and more heat, until the pulp temperatures at destination are far warmer than air temperatures in trailer. And yet when stored at 32 degrees, one ton of broccoli respire at the relatively modest rate of just 4,400 btu's in 24 hours. This dramatic rise from 4,400 btu's at 32 degrees, to 21,400 btu's at 40 degrees, to 56,500 btu's at 60 degrees, demands that iceless broccoli be handled with the utmost care by the shipper and Carrier alike.

For its part, Shipper states that the broccoli in question was properly precooled prior to shipping and supports this contention with, among other things, a pick ticket which appears to have been signed by the driver (signature similar to the signature at the bottom of the bill of lading), and which contains a handwritten "35" in close proximity to the shipping quantity. And while this notation would ideally contain the word "pulp" or "temp" and/or the word or symbol for "degrees," to make its meaning more certain, in the context of shipping fresh produce, and given the prominence of the notation (middle upper-right near the shipping quantity information) of the document, we find that this notation lends support to Shipper's assertion that this broccoli was precooled to 35 degrees at shipping point. Additionally, the copy of the bill of lading provided by Shipper contains a notation which appears to state, "Prod. temp 35°." And although the copy of the bill of lading provided by CARRIER does not show this notation, CARRIER does not (in its submissions) object to the authenticity of the copy provided by Shipper.

In contrast, the air temperatures readings from the portable recorder indicate air temperatures in the mid-forties throughout the trip, eight (8) to ten (10) degrees warmer than the 34-36 degree temperature instruction. Air temperature readings this much warmer than the instructed temperature for the entire duration of a long-haul trip is well in excess of what we refer to in our Transportation Guidelines as a “slight deviation.”

Specifically our guidelines state—

*Slight deviations in transit temperature based on, among other things, the location and accuracy of the temperature recorder, are inevitable and permissible. What constitutes a “slight deviation” will vary, but as a rule of thumb temperatures within the trailer should not deviate more than four (4) or five (5) degrees Fahrenheit from the agreed-upon transit temperature. If a temperature range is specified, any deviation will be assessed from the midpoint of the specified range. A temperature variance lasting less than twelve hours may also be categorized as a slight deviation, depending on the extent of the variance, the relative perishability of the commodity, and other circumstances.*

In response to the warm temperature readings reported by the portable recorder, CARRIER does not argue that this recorder malfunctioned, but rather asserts that the temperature logging functionality of the reefer unit is more accurate than the temperature recording of the portable recorder; and therefore suggests we should refer predominately (or exclusively) to the temperature readings recorded by the reefer unit. But, of course, the industry has relied on basic portable recorders (more basic than what was used here) affixed to the product packaging for decades because they tend to be both accurate and reliable.

Here, in the absence of some indication that the recorder was malfunctioning we do not believe the air temperature readings from this device can properly be dismissed. Rather we think the most likely explanation for the difference (mid-40’s for the portable recorder; 36-38 degrees for the reefer unit) is simply that these devices recorded air temperatures in different locations within the trailer.

Specifically, the portable recorder was presumably attached directly to the product packaging, in close proximity to heat from the product (whether from the field, from respiration, or both) which the continuous flow of cool air is expected to “wick away” to keep the product from overheating in transit; conversely, the return air sensor of the reefer unit is separated from the produce by the bulkhead wall in the front of the trailer, creating a space that is both removed from the produce and in close proximity to the refrigeration coils designed to cool a 53’ foot trailer. Because, fundamentally, Carriers are expected to protect the product throughout the trailer, and not just in any one location, a portable recorder showing high-readings in one location of the trailer may be sufficient to establish a breach of the contract of carriage for failure to properly maintain transit temperatures.

With respect to the vegetable trays that were received by Retailer, CARRIER argues that these vegetable trays must have been pulping at no more than 44 degrees per the receiver’s product pulp temperature specifications. Pulp temperatures at this level, however, are far too warm for a high-respiration item like iceless broccoli florets, which Shipper alleges were damaged in transit as a result of the Carrier’s failure to maintain transit temperatures between 34-36 degrees as instructed on the its bill of lading.

With respect the pattern of problems CARRIER alleges with similar loads from Shipper, we acknowledge that iceless broccoli is a higher-risk item, and that problems can arise even when transportation temperatures are normal. In the case at hand, however, warm pulp temperatures were not documented at shipping point, and transit temperatures, as explained above, appear to have been warm. Therefore, any suggestion that this product would have been rejected even if transportation temperatures had been normal must, in our view, be dismissed as unsupported and overly speculative.

All this to say, given the warm transit temperatures suggested by the portable recorder, and the respiration characteristics of broccoli florets, we do not believe the warm receiving temperatures noted by the retailer are sufficient to overcome the presumption created by driver's signature on the pick ticket and bill of lading, which suggests the product was properly cooled at shipping point.

For these reasons, we find that the preponderance of the evidence suggests that the Carrier failed to properly maintain air temperatures in transit causing the warm pulp temperatures complained of at destination, and leading to the rejection of the broccoli that is the subject of this claim.

#### **DECISION & AWARD**

It is therefore hereby decided that CARRIER owes Shipper the \$9,166.50 f.o.b. invoice price of the broccoli florets, plus transportation charges of \$3,340.15, which Retailer deducted from Shipper's account in connection with this shipment, for a total amount owing of \$12,506.50, with interest thereon, at a rate of .53% per annum (per the current one-year constant maturity treasury yield) from May 1, 2015, until paid.

This Decision becomes final and effective twenty-one (21) days from the date of this Decision. Payment is due with ten (10) days of the date this Decision becomes final and effective.

Dated: April 22, 2016  
Location: Carol Stream, Illinois

Arbitrators:

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C. James Carr

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Larry McDaniel

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Douglas Nelson

