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DRC BOARD AMEND RULES

During their Semi-Annual Meeting in December the Board of Directors amended the DRC Mediation and Arbitration Rules to clarify the distinction between Claims, Counterclaims and Counterclaims with Set-Off. These changes were made following a review with legal counsel to ensure consistency with PACA rules.

In addition, the Board amended the DRC Trading Standards to support a measure the Canadian Food Inspection Agency will be introducing in the new year under their Import Control System to require importers of fresh fruits and vegetables to declare their CFIA Produce License Number or DRC Membership Number at time of import.

Members can go to the website to obtain the new rules or they can call the office and a copy will be mailed to them.

GUEST COLUMN

Ian Greig
DRC Arbitrator

LOOK BACK

An arbitrator looks in the rear view mirror.

We all wish to avoid confrontations and having to go through arbitration. However things happen and every so often a dispute is taken to arbitration. This is an arbitrators advice to those who find themselves either filing a claim or those who become Respondents to such claims.

1. Be sure to submit all the relevant documents to the arbitrator.

How many times have I read the arguments but have not been given the documentary evidence to back it up? Parties need to remember that arbitrators can only rule on the evidence submitted to them. If they do not have the evidence in hand it cannot be used towards making a decision. Informing the arbitrator that such and such happened is valueless if there is no evidence to back it up, especially if the opposing party denies the action.

Parties often assume that the arbitrator will understand the circumstances, why things happened the way they did, or they will understand the thought process of the party concerned. But the arbitrator is not a mind reader. He sees only the documents supplied and it is on them that he must rule.

If you do not have the relevant documentation then it is best to explain why. This is more important than it seems because if you have gaps in your documentation the arbitrator may be suspicious and cast doubt on the rest of your arguments.

2. Keep the proper records.

Many arbitrations would be avoided if the party had just kept the proper records, many of them required by law and/or by DRC rules. See DRC Trading Standards, Sec. 2-9.

Business can get hectic, time is short, good staff is in short supply, trucks are late, prices are rising and supply is dwindling! All of these situations lead to people taking shortcuts and not keeping all of the records.

You have filled out this form or that receipt a hundred times and it has never been requested and has never seen the light of day again. Why bother!

Well, when one of your deals turns sour, that missing receipt, BOL, brokers MOS, or another piece of paper may cost you thousands of dollars when you cannot prove your case.

Many times a party will state that they have done business with a certain party a hundred times, they know each other well and are on a first name basis. "I just call up Harry" or "I got this email from Bill" are familiar refrains when documentation is missing. Taking Harry or Bill at his word is great but how many of the deals with him ended up with a load of rotten fruit, or the wrong fruit. Probably none. But now it has happened and suddenly Harry is not the nice guy you thought he was. He wants payment of thousands of dollars. Worse, Harry kept a proper log of all documents and you did not.

3. Know the DRC rules.

Many cases that come before arbitrators because a party did not follow the rules. This is especially true of inspections. The DRC rules are very clearly laid out in the members handbook yet cases continue to arrive where these rules were ignored. Often a party will state that they did not ask for an inspection because of the cost. But once in an arbitration the cost of that inspection looks very cheap.

If you use a Broker be very aware of the rules governing brokers especially those that limit the brokers responsibility. "But I phoned the broker" is an all too familiar refrain, but it is not the brokers responsibility to pass the complaint on to the other party and the clock is ticking and an inspection is due.

4. Know where you stand in an arbitration.

The arbitration is a very fair process and arbitrators are committed to reaching fair decisions. But each party can help themselves greatly by understanding a few simple rules.

If you are the Respondent you will only get one turn at bat. Be sure to read everything that the Claimant has written in his Statement of Claim very carefully. Answer every charge as fully as possible. Provide full documentary evidence. Leaving a charge unanswered is a virtual admission of guilt.

Be prepared to make counter charges if you think that the Claimant has not told, or only partially told the truth. Remember, provide all of the documentation.

Also remember that once you have answered the Claim, the Claimant has another chance to rebut your answer. Unless the

arbitrator rules otherwise due to exceptional circumstances the Respondent does not get a second chance. Be sure to take every charge against you very seriously.

When you are the Claimant make sure and state all of the facts. Never mind how small they appear to you. It is up to the arbitrator to decide what is important.

Present the facts in a chronological order. Nothing frustrates an arbitrator more than having to rearrange the Claim in order to understand what happened and when. Sometimes the arbitrator will have to spend hours just to unravel the timeline before he even gets to comparing the evidence from both sides. And then he may not have it right.

You can help yourself considerably by making it clear just what happened and when. This can be helped if you have followed the DRC rules and prepared all of the required documents which will have the dates and times on them.

When making your reply to the Respondents answer there are two things to consider. Be sure to fill any holes the respondent has made in your case and be sure to answer fully any charges that he has brought against you. Leave nothing unanswered.

Understand that your second shot is for the rebuttal of issues raised by the Respondent, not to bring new charges. The arbitrator will ignore these. This is why it is so important to lay out your entire case very carefully at the start in your Statement of Claim.

5. Be sure your evidence is correct.

You would be amazed of the number of claims that come with incorrect arithmetic. Be sure to check it twice.

Do not send documents for another load or a different day. Even if your opponent does not notice your deception the arbitrator most certainly will, and will be influenced accordingly.

Be sure that photographic evidence shows some identification. Two photos, one of rotten apples and another of a container does not prove that those apples came from that container.

6. Admit if you are in error.

In many disputes it is not clear cut just who is in the wrong and both may have committed some error. If this applies to you then confess instead of trying to convince the arbitrator you are innocent. Once that part of the case is settled then the arbitrator can zoom in on the rest of the case. But if you do not confess and it is obvious to the arbitrator that you are lying he will be suspicious of the rest of your testimony.

7. Do not try to degrade your opponent.

Calling your opponent a "useless so-and so" or even worse, will not help your case. In fact it may even hurt it if your opponent maintains a dignified attitude.

The arbitrator will decide on the evidence and the evidence

alone. Name-calling will change nothing.

8. Do not try to bamboozle the arbitrator.

The arbitrators are skilled and trained in their work and can see a phoney a mile away. Trying to influence the arbitrator with phrases such as “everybody knows” “it is well understood” or “it is custom in the industry” instead of quoting the facts and the DRC rules will get you nowhere.

Do not try to mix Canadian and U.S. dollars thinking that the arbitrator will just assume the more expensive U.S. currency. Arbitrators take a dim view of these tactics. If your case involves both currencies keep them quite separate in your claim requests.

QUESTIONS & ANSWERS

AM I LIABLE FOR FREIGHT CHARGES?

Question:

We are a west coast FOB shipper. We never arrange for trucks or pay freight. We have been contacted by a law firm who insists that we must legally pay the freight for moving one of our loads, because the consignee is now insolvent. They readily admit their client agreed to bill the consignee, but insist they can look to us for payment when consignee fails to pay. Have you heard of this?

Answer:

First, they are not completely out of their minds as this kind of liability exists on many products outside of produce, and may exist for those who use an “off the shelf” standard bill of lading. It is commonly called “section 7” and basically states the shipper is liable for freight charges unless otherwise indicated on the bill of lading.

Look at your bill of lading to see if there is a box on the front where you are supposed to initial if you are not liable for payment. Also look on the back and see if the rules on the back (usually #7) indicate the same thing. Most shippers have removed the box from the front the bill of lading or make sure they have initialled it. If you remove it from the front, make sure you remove it from the back of the bill of lading as well. The bill of lading is like all other documents, you are responsible for what you sign and agree to. You are issuing the bill of lading, so be sure you agree with its contents.

If you are using your own bill lading with no reference to this, you should advise the law firm this is exempt freight and there is no reference to any shipper liability on the bill of lading.

CHANGES TO DRC MEMBERSHIP

Question: I noticed a new heading in the “Members Only” section of the website called ‘Changes to DRC Membership.’ What is this and how will it help me as a member?

Answer: You’re right, contained within the Member’s Only section of the website, there is a new heading titled,

“Changes to DRC Membership.” This section informs our current members of new members, pending resignations and terminations. The lists are updated weekly and meant to provide the most up-to-date information to ensure our members are aware of who is who in the marketplace. As mentioned in previous Newsletters, this time of the year is when you should be extra diligent in your research before agreeing to do business with an unfamiliar company. Even if they provide you with a DRC or CFIA license number be sure to verify its accuracy. You can do this by visiting the ‘Changes to DRC Membership’ and ‘Membership Lists’ sections on the website. If they provide you with a CFIA or PACA license number, check our ‘Sanctioned Parties’ list (again found on the website) and contact the CFIA or PACA for confirmation. Changes to DRC Membership” provides current changes in the produce industry to help our members avoid speculative transactions. The DRC works very hard to protect our members and minimize their risks.

In order to continue, it is important that suspicious dealers be reported to our office.

Lastly, pending resignations are posted to give our members the opportunity to notify us of outstanding issues with companies requesting resignation. Be advised however, even if a membership is terminated, the nine-month window to file a claim is maintained provided the defendant was a member at the time the dispute arose.

MEMBERSHIP

Ever wonder why your trading partner is not a DRC member? Well, here are two basic answers.

Lack of Awareness - they don’t know what the DRC is or what it does.

OR

Awareness – they do know what the DRC is and what it does, and would rather not submit to such a high standard of trading discipline.

Decide for yourself whom you should be doing business with. Please join us in welcoming aboard the following new members.

WELCOME ABOARD – 41

2478 S.R.G. INTERCONTINENTAL INC.

2479 M & CP FARMS_2479 (A d/b/a of D. Beccaris Ltd.)

2480 ECLIPSE BERRY FARMS, LLC

2481 BALAJI FAIRTRADE LTD.

2482 TERRA-SOL

2483 DONNELLY FARMS LTD.

- 2484 COPPOLA FARMS INC.
- 2485 TMG PRODUCE
- 2486 CAPITAL CITY FRUIT COMPANY, INC.
- 2487 F.A. INTERNATIONAL INC.
- 2488 GESSAM INC.
- 2489 LEWIS POTATO PACKERS LTD.
- 2490 FLORIDA SPECIALTIES, LLC
SCATTAGLIA GROWERS & SHIPPERS, LLC (Also d/b/a
- 2491 SGS)
- 2492 APPLE JUNCTION
- 2493 CHAMP'S MUSHROOMS INC.
- 2494 SINO PACIFIC (A d/b/a of 0864365 B.C. Ltd.)
- 2495 APACHE PRODUCE IMPORTS LLC
- 2496 SEASON FRESH TRADING INC.
- 2497 EAST POINT POTATO 2009 INCORPORATED
- 2498 M & D QUALITY PRODUCE INC.
AgroSun Fresh Produce Company Ltd. (A d/b/a of
- 2499 7146329 Canada Ltd)
- 2500 EVERGREEN HERBS LTD.
- 2501 GOURMET SPECIALTIES
- 2502 EMBRA TRADING
- 2503 FRESCA FOODS INC.
VEG DIRECT (A d/b/a of Telecom Resource Corpora-
- 2504 tion)
- 2505 NEW CENTURY PRODUCE INC.
- 2506 DOIRON'S APPLES (A d/b/a of A.D. Enterprises Inc.)
- 2507 EOM AND EOM FOODS COMPANY
- 2508 TRANS EXPORTS & IMPORTS
- 2509 SOCIEDAD EXPORTADORA VERFRUT S.A.
AGRICOLA Y COMERCIAL CABILFRUT S.A. (También
- 2510 haciendo negocios como Cabilfrut)
- 2511 SOCIEDAD AGRICOLA LA ROSA SOFRUCO S.A.
- 2512 WORLD PERFECT INC.
- 2513 EXPORTADORA MAGNA TRADING S.A.
- 2514 BRO-QUALI INC.
- 2515 VEGFRESH INC.
- 2516 OCEAN FARM
- 2517 WEST LAKE FRESH A d/b/a of West Lake Brokers, Inc.
FERMES D'ANGELO INC. (Faisant également affarrie
- 2518 sous D'Angelo Farms Inc.)

- B & G TRANSPORT (A d/b/a of 6129668 Canada Inc.
(now marketing through S.R.G. Intercontinental -DRC #
- 2459 2478)
- 2325 S. BOURASSA (ST-SAUVEUR) LTEE.
- 2335 WILD OATS MARKETS CANADA, INC.
- 2238 FLORIDA SPECIALTIES, INC.
- 2340 MANNA INTERNATIONAL TRADING LTD.
- 2328 S&S PRODUCE, LLC
916819 ONTARIO INC. (Also d/b/a Doug Smith Promo-
- 737 tions)
- 2348 WESTFALIA MARKETING UK LIMITED
- 2082 FRESH FIRST PRODUCE INC.
- 2125 6779620 CANADA INC.
ORGANIC FARM, S. DE P.R. DE R.L. (También haciendo
- 2349 negocios como Rancho Buena Suerte)
- 2347 FUNDO SACRAMENTO S.A.C.
- 2343 LA MAISON BERGEVIN INC.
SODIFRUIT INC..(Now marketing through Jardino Fresh
- 150 Marketing Inc.-DRC 2446)
- PRIDE PAK NFLD (A Division of Pride Pak Canada Ltd.)
- 2366 Marketing through Pride Pak Canada Ltd. -DRC 376

DRC MEMBERSHIP STATISTICS

Overall Country Breakdown as of 15-Dec-09	
Belgium	1
Brazil	2
Canada	893
Chile	17
Costa Rica	3
Dominican Republic	1
Ecuador	1
Guatemala	2
Holland	1
Honduras	5
Mexico	23
Peru	1
Trinidad	1
U.S.A.	345
Total Members:	1296

Inactive Members— 17

The following members have become inactive since September 2009 for various reasons. It should be noted that these firms remain subject to DRC for any transactions which occurred prior to the "date inactive" for the period of nine months as measured from when the dispute arose provided a Notice of Dispute is filed in a timely manner.

**TRADING ASSISTANCE SUMMARY
DECEMBER 15, 2009**

Total # of Files Complaints Resolved since Feb 2000	1198
Total # of Files Pending	20
Files Resolved Informally (no Arbitrator)	
Number of Complaints	995
Average # of Days to Resolve	39
Average Amount of Claims	\$24,933
% of Complaints Resolved informally	83%
Files Resolved Formally (with Arbitrator)	
Number of Complaints	203
Average # of Days to Resolve	178
Average Amount of Claims	\$25,878
% of Complaints Resolved Formally	17%
Files Opened by Issue	
Disputes	731 61%
Non-Payment	318 26%
Questions/Opinions	158 13%
COMPLAINTS RESOLVED BY COUNTRY	
Canada	
Interprovincial	187 50%
Intraprovincial	145 39%
Canada vs. USA	36 10%
Canada vs. Mexico	0 0%
Canada vs. Other	4 1%
Total	372
United States	
Interstate	17 2%
Intrastate	7 1%
United States vs. Canada	726 96%
United States vs. Mexico	2 0%
United States vs. Other	5 0%
Total	757
Mexico	
Interstate	1 2%
Intrastate	0 0%
Mexico vs. Canada	28 68%
Mexico vs. USA	11 27%
Mexico vs. Other	1 2%
Total	41
Other Countries	
Other vs. Canada	15 88%
Other Vs. United States	0 0%
Other Vs. Mexico	2 12%
Total	17

**FRUIT & VEGETABLE DISPUTE
RESOLUTION CORPORATION**



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Hours of Operation

8:30 am - 5:00 pm (EST)

www.fvdr.com