

Commodity Futures Trading Commission
CEA CASES

NAME: CARGILL, INCORPORATED, AND ERWIN E. KELM

CITATION: 12 Agric. Dec. 1109

DOCKET NUMBER: 58

DATE: OCTOBER 5, 1953

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AGRICULTURE DECISIONS

BEFORE THE SECRETARY OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

(No. 3649)

In re CARGILL, INCORPORATED, AND ERWIN E. KELM. CEA Docket No. 58. Decided October 5, 1953.

Denial of Motion to Have Complaint Made Definite and Certain

Where complaint spells out the facts alleged against respondents and specifies the provisions of the act alleged to have been violated, and respondents' motion, after filing answers to the complaint, seeks detailed delineation evidence of the precise legal theory or theories by which the complainant will attempt to link the facts alleged to the specified provisions of the act, the motion will be denied because there is no lack of due process of law and no noncompliance with Section 5(a) of the Administrative Procedure Act or the rules of practice under the Commodity Exchange Act by denying respondents' motion.

Intent of Rules of Practice Relative to Certification of Motion to Secretary

Intent of the rules of practice seems to be to authorize the referee to rule upon a motion of the kind involved herein or in the discretion of the referee to certify the motion to the Secretary for a decision *without a ruling by the referee*, and the certification technique was expected to be used in novel and extremely difficult or important questions.

Purpose of Appeals from Referee

There are no provisions in the rules of practice for interlocutory appeals from the rulings of the referee, but all appeals from rulings by the referee upon motion, as illustrated by Section 0.18, are intended to be

taken up in connection with review of the entire proceeding by the Secretary after the referee has filed his report.

Denial of Motion to Have Complaint Made Definite and Certain

Since answers to the complaint herein have been filed after the referee's ruling, consequently, one of the functions and some authorities say the only function of the motion, namely, to enable the framing of a proper response of pleading, has disappeared.

Denial of Motion to Have Complaint Made Definite and Certain

Where respondents, after filing answer to the complaint, filed a motion requesting that the complaint be made definite and certain and that without the requested information they will be prejudiced in preparing for the hearing and

presenting their defense, the Judicial Officer denied the motion on the grounds that a pre-hearing conference is available in this proceeding; the complainant must proceed first with evidence at the hearing which is held at intervals; the respondents may claim surprise, may file briefs, suggest findings and conclusions; and they may file exceptions to the referee's report and have oral argument before the deciding officer prior to the issuance of the final decision and order, so that respondents will have ample opportunity to meet not only the allegations of the complaint but also the complainant's evidence and argument.

Applicability of Criminal and Civil Rules of Pleadings in Administrative Proceedings

There is ample authority holding that the technicalities and formalities of criminal and civil pleadings are not automatically applicable in administrative proceedings.

Mr. Benj. M. Holstein for Commodity Exchange Authority. *Mr. James E. Dorsey* of Dorsey, Colman, Barker, Scott & Barber, of Minneapolis, Minnesota, *Mr. Leo F. Tierney* of Mayer, Meyer, Austrian & Platt, of Chicago, Illinois, and *Mr. Weston B. Grimes*, of Washington, D. C., for respondent Cargill, Incorporated. *Mr. Philip Neville* of Neville, Hachey & Johnson, of Minneapolis, Minnesota, for respondent, *Erwin E. Kelm*. *Mr. John Curry*, Referee.

Decision by Thomas J. Flavin, Judicial Officer

DENIAL OF MOTION

In this disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), the respondents, prior to filing their answers to the complaint, filed a motion to have the complaint made more definite and certain. Following the filing of a reply to the motion by the complainant, the referee denied the respondents' motion. Thereafter, the respondents filed answers to the complaint and also filed a request that the referee, pursuant to section

0.10(b) of the rules of practice, certify to the Secretary of Agriculture for reconsideration the respondents' motion for a more definite and certain statement of certain matters alleged in the complaint. On September 23, 1953, the referee made such a certification.

The second sentence of section 0.10 (b) of the rules of practice provides:

"The submission or certification of any motion, request, objection, or other question to the Secretary prior to the time when the referee's report is filed with the hearing clerk shall be in the discretion of the referee."

Section 0.10(a) and section 0.7(d) (1) of the rules of practice authorize the referee to rule upon motions and requests prior to the filing of the referee's report. Section 0.18 provides for the transmittal of the record to the Secretary after the filing of exceptions to the referee's report and prescribes that such record shall include ". . . motions and requests filed, and rulings thereon . . ." The intent of the rules of practice seems to be to authorize the referee to rule upon a motion of the kind involved or in the discretion of the referee to certify the motion to the Secretary for decision *without a ruling by the referee*. Naturally, the certification technique was expected to be used in novel or extremely difficult or important questions. n1 There are no provisions for interlocutory appeals from rulings of the referee, but all appeals from rulings by the referee upon motions, etc., as illustrated by section 0.18, are intended to be taken up in connection with review of the entire proceeding by the Secretary after the referee has filed his report.

n1 See p. 53, Final Report of the Attorney General's Committee on Administrative Procedure.

Since the appeal is now before us, however, we might as well decide it at this time. Answers to the complaint have been filed since the referee's ruling and, consequently, one of the functions, and some authorities say the only function, n2 of such a motion, namely, to enable the framing of a proper responsive pleading, has disappeared.

n2 There are a number of cases under the current Rule 12(e) of the Federal Rules of Civil Procedure (from which bills of particulars were excluded in 1948), such as *Container Co. v. Carpenter Container Corp.*, 8 F.R.D. 203, 210 (D. Delaware 1948), which hold that the function of motions to make more definite and certain is not to assist the moving party generally at the trial. For a similar view on bills of particulars, and this is what the motion here amounts to, see *Page Steel Wire & Co. v. Blair Engineering Co.*, 22 F.(2d) 408, 406, 407(C. C. A. 3d, 1927).

But at any rate, the complaint spells out the facts alleged against

the respondents and specifies the provisions of the act alleged to have been violated. The respondents' motion seeks detailed evidence and delineation of the precise legal theory or theories by which the complainant will attempt to link the facts alleged to the specified provisions of the act. We see no lack of due process of law and no noncompliance with Section 5 (a) of the Administrative Procedure Act or the rules of practice under the Commodity Exchange Act by denying the respondents' motion.

With the answers already filed, the respondents are left with the claim that without the requested information they will be prejudiced in preparing for the hearing and presenting their defense. The proceeding is one in which a prehearing conference is available, the complainant must proceed first with evidence at the hearing, the hearing is held at intervals, the respondents may claim surprise and ask for a continuance at any time, the respondents may file briefs, suggested findings and conclusions, etc., with the referee, and they may file exceptions to the referee's report and have oral argument before the deciding officer prior to the issuance of the final decision and order. The respondents, then, will have ample opportunity to meet not only the allegations of the complaint but also the complainant's evidence and argument. As we noted recently in a group of proceedings (one of which is *In re Brodie*, 11 Agric. Dec. 60 (11 A.D. 60) (1952), 3 Pike and Fischer Admin. Law (2d) 120) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 *et seq.*), there are numerous cases holding that the technicalities and formalities of criminal and civil pleading are not automatically applicable in administrative proceedings.

For the reasons given by the referee in his ruling and for the additional reasons given here, the motion of the respondents is denied.

LOAD-DATE: June 8, 2008

