

Arbitration Case Number 1531

Plaintiff: Lincoln Grain Inc., Lincoln, Nebraska

Defendant: Archer Daniels Midland Company, Minneapolis, Minnesota

June 21, 1977

Statement of the Case

The arbitration committee reviewed all submitted evidence in the case.

The Plaintiff, Lincoln Grain Inc., asked that the Defendant, Archer Daniels Midland Company, pay balance of monies due plus interest on an identity-preserved storage contract entered into and agreed to by both parties dated October 14, 1975.

The Defendant, in answer, requested that the Plaintiff be found negligent in the handling of the Defendant's stored soybeans and also requested financial renumeration for losses incurred on the soybeans that the Defendant claimed were not identity-preserved.

The Facts

A contract existed for storage and identity-preserved handling.

There was no evidence or indications that Plaintiff misrepresented the type of storage facility involved.

Bin numbers were itemized and the Plaintiff stated bin temperature readings, which were forwarded weekly. (Not disputed by the Defendant.)

There was no disagreement evident on type of facility used for storage.

The Plaintiff stated the Defendant was given opportunity to inspect the facility before and during time of contract and also opportunity to inspect stocks during the storage period. (Not disputed by the Defendant.)

There was no evidence that the Defendant had a representative look at the facility or

inspect the Defendant's storage soybeans at any time prior to receipt of soybeans or during storage or load-out period.

There was no evidence of any amendment or written objection referencing delay of loading out nor any evidence of agreement on any contract modification because of delays or any other area of contention.

The Defendant addressed other problems arising during execution of contract only after the fact.

Referencing the Defendant's contention that a scale problem existed at Lincoln Grain Inc., evidence indicated no point of contention on weight losses. Documents showed that the Plaintiff accepted outturn weights on rail cars and some trucks and, in any case, the contract stipulated a shrink factor.

Foreign material and other grains were present in inbound soybeans, as well as outbound, and evidence did not show clearly the degree of differences or a quantified loss thereupon.

The Decision

The arbitration committee found unanimously for the Plaintiff, Lincoln Grain Inc.

No evidence was submitted showing any amendment to the contract or any written objections on delay in loading or written attempts to reach agreement on limiting period of storage charges under the contract prior to completion of loading out.

It could not be concluded that the Plaintiff performed less than reasonable warehousing given: 1) the type of facility involved; 2) the contractual terms stating that the Plaintiff "...will not be responsible for differences in grade between soybeans unloaded and those loaded out..." and 3) the Defendant's failure to inspect the plant and its stored grain at any time and especially after alleged differences started to fester.

Withholding of storage payment based on a belief that the soybeans were not stored identity-preserved was not a legitimate offset to the storage claim.

The committee herein ruled that the Defendant, Archer Daniels Midland Company, pay the Plaintiff, Lincoln Grain Inc., all storage due (i.e. three unpaid storage invoices amounting to \$12,255.31) plus interest at 6 3/4 percent per annum for the period beginning with unpaid invoices through final settlement date.

Submitted with the consent and approval of the arbitration committee, whose names are listed below:

Edmund P. Karam, Chairman
Continental Grain Company, Chicago, Illinois

Gerald Frazier
Union Equity Co-op Exchange, Enid, Oklahoma

S. L. Matthies
General Mills Inc., Minneapolis, Minnesota