



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

October 8, 1981

DECISION OF ARBITRATION COMMITTEE  
ARBITRATION CASE NO. 1559

PLAINTIFF: ConAgra, Inc. - St. Louis, Missouri

DEFENDANT: Peavey Company - Alton, Illinois

The case involved bean barge MEM-393 applied by the Plaintiff to the Defendant on a scale and purchase contract respectively calling for delivery CIF New Orleans.

The dispute arose over the responsibility for the payment of a switching charge assessed by the carrier.

The sequence of events by days is as follows:

June 3, 1980 - 6:30 A.M. MEM-393 was spotted at Mile 212 under billing to Plaintiff Nola. Approximately 3:30 P.M. MEM-393 was applied by Plaintiff to Defendant on their respective contracts. Defendant instructed Plaintiff to bill barge to the Defendant's St. Elmo Elevator, Paulina, La. Plaintiff later advised Defendant that the carrier, Gateway Barge Line, would not honor the reconsignment unless one of the two principals agreed to pay a \$600.00 switching charge. The Defendant refused to agree to those terms. MEM-393 was constructively placed at Conti Eastbank fleet at 7:00 P.M.

June 4, 1980 - Plaintiff changed billing to Defendant New Orleans citing terms of the contract and barge trade rule #5.

June 5, 1980 - Plaintiff submitted draft of \$296,000.00 on MEM-393 which Defendant refused to honor on grounds that Plaintiff had ignored billing instructions.

June 12, 1980 - Defendant notified carrier by wire that they would pay switching charge but for Plaintiff's account.

June 13, 1980 - Defendant honored Plaintiff's draft request.

June 17, 1980 - MEM-393 arrived St. Elmo

June 24, 1980 - MEM-393 unloaded and checked empty 7:19 A.M.

The Plaintiff sought damages in the amount of \$772.89 as lost interest for a seven day delay in draft payment and disclaimed any responsibility for switching charges. As a basis for the claim the Plaintiff cited barge trade rule #5 which defines the responsibility of the seller and Arbitration Case 1515 as a precedent in determining the definition of "Rate Point" and the custom of the trade.

The Defendant denied any liability and claimed in turn damages of \$2,350.00 plus interest for switching expenses and demurrage. The Defendant claimed that Plaintiff assumed the risk of a re-consignment charge when the Plaintiff originally billed the barge to himself, then ignored the Defendant's instructions to bill the barge to St. Elmo and instead billed it to the Defendant at New Orleans. The Defendant stated the Plaintiff misinterpreted rule #5 and the definition of CIF New Orleans as understood by the trade.

OPINION:

The committee found in favor of the Plaintiff for his claim of \$772.89 as interest loss due to the Defendant's failure to honor the draft when presented. The Plaintiff complied with Barge Trade Rule #6 in all respects. The Defendant attempted to make payment conditional upon settlement of the switching charge dispute. That action runs contrary to both Barge Rule #6 and the normal commercial practice of keeping disputes to as limited a scope as possible. Thus, the committee felt the Defendant had the obligation to pay the draft on first presentation in accordance with Barge Rule #6 and then resolve the switching charge dispute by other available alternatives.

The committee denied the Defendant's counter-claim of \$1,750.00 for demurrage charges. Neither party presented evidence or argument that the delay in unloading the barge was a direct effect of the dispute over the switching charge or of the dispute over payment of the draft. Further, the Defendant was always in a position to pay the draft and unload the barge immediately, if he so desired. Thus, due to lack of evidence to the contrary, the committee found the unloading time of MEM 393 was not influenced by either of the other two disputes.

The committee denied the Defendant's counter-claim of \$600.00 for switching charges. Neither the contracts nor the trade rules speak directly to the issue of liability for switching charges. Also, the committee felt that there was no established custom of the trade in dealing with switching charges. Barge Trade Rule #5, however, clearly states that the seller's only obligation is to furnish the buyer a validated bill of lading ordering the barge to the rate point specified in the contract. The Plaintiff in this arbitration obviously complied with the letter of Barge Trade Rule #5.

It was the committee's opinion that although the boundaries of CIF NOLA have expanded beyond those defined in Arbitration Case #1515, individual carriers vary in their interpretation of the precise starting and stopping points of the area. Also, individual carriers vary in their treatment of movements to specific destinations within the boundaries of New Orleans. Since the buyer determines the destination of any barge applied to a CIF contract, it would seem that he is in the best position to know the requirements of individual carriers with regard to the destination he may elect. Thus, the committee felt that the risk of charges relating to specific destinations is most logically borne by the buyer.

In conclusion, the committee ruled in favor of the Plaintiff for lost interest in the amount of \$772.89 and against the Defendant for his counter-claim of \$2,350.00 for switching expense and demurrage charges.

/s/ Morris W. Champion, Chairman  
The Early & Daniel Company, Inc.  
Cincinnati, Ohio

/s/ Steve Lucas  
Louis Dreyfus Corporation  
Stamford, Connecticut

/s/ John McClenathan  
Growmark, Inc.  
Bloomington, Illinois

October 8, 1981

NATIONAL GRAIN AND FEED ASSOCIATION  
DECISION OF ARBITRATION APPEALS COMMITTEE

ORAL HEARING

ARBITRATION CASE NUMBER 1559

Appellant: Peavey Company, Alton, Illinois

Appellee: ConAgra, Inc., St. Louis, Missouri

The Arbitration Appeals Committee individually reviewed all evidence submitted in Arbitration Case Number 1559, and reviewed the findings and conclusions of the original Arbitration Committee. After hearing the oral arguments of both parties to the above proceeding, reviewing the admissible evidence submitted at the oral appeals hearing and finally reviewing the verbatim transcript, the Arbitration Appeals Committee unanimously found as follows:

1. To affirm the Arbitration Committee finding that Peavey (Appellant) pay the interest costs of \$772.89 and deny Peavey (Appellant) counter-claim of \$1,750.00 for demurrage charges. Peavey declined to argue either question on appeal.
2. The main consideration in the case, and the reason for appeal centered around the definition of CIF NOLA and whether Arbitration Case 1515, dated February 18, 1975 applied and to what extent, if any, custom of the trade dictates as to whether the buyer or the seller pays the diversion (switch) charge.

ConAgra (appellee) defined CIF NOLA being limited to an area between mile 108.7 and mile 73.5 as delineated in WFB Tariff No. 7 and given support by Arbitration Case 1515, dated February 18, 1975. Appellee further contended that a buyer who requires delivery to an elevator outside that narrow band (108.7 and 73.5) on the Mississippi must be liable for switching charges unless the buyer has contractually bought the grain CIF Baton Rouge/NOLA or CIF Baton Rouge/Myrtle Grove.

Appellant (Peavey) contended both on appeal and before the original committee that Tariff No. 7 relied upon by appellee (ConAgra) was cancelled a number of years ago and that since 1975, the custom of the trade wherein billions of bushels have traded on CIF NOLA basis outside the narrow band of mile 108.7 and 73.5 had rendered Arbitration Case 1515 no longer relevant.

The original committee agreed in part with Peavey to the extent that the boundaries of CIF NOLA had expanded beyond those defined in Case 1515. They did, however, support ConAgra's contention that the buyer determines destination and therefore is responsible for diversion charges, if any.

The Arbitration Appeals Committee disagreed with the original committee. It was clear from the record that over 99% of the barges traded CIF NOLA were unloaded without dispute at elevators both inside and outside mile 108.7 and 73.5. It was significant that both parties supported that position. The Appeals Committee concluded that today because of the changes since 1975, CIF NOLA included all elevators in the NOLA area with the possible exception of the two points at the extremities, Baton Rouge and Myrtle Grove. Delivery to those points was apparently well understood within the custom of the trade. The Arbitration Appeals Committee felt the change in the custom of the trade (the expansion on the river) supported by the billions of bushels traded CIF NOLA, clearly established what is today the custom of the trade and therefore made continued reliance upon Arbitration Case 1515 inappropriate.

The Arbitration Appeals Committee reversed the findings of the original Arbitration Committee with respect to the switch charge question and ordered ConAgra to pay Peavey \$600.00 for reimbursement of switching charges to fulfill the contractual obligation of a CIF NOLA sale of barge MEM-393 to Peavey, who gave proper instructions for delivery to St. Elmo.

/s/ James Donnelly, Chairman  
R.F. Cunningham & Company, Inc.  
Melville, New York

/s/ Richard W. Goldberg  
Goldberg Feed & Grain  
West Fargo, North Dakota

/s/ Charles H. Holmquist  
Holmquist Elevator Company  
Omaha, Nebraska

/s/ Clayton W. Johnson  
Mid States Terminals, Inc.  
Toledo, Ohio

/s/ W.C. Theis  
Simonds-Shields-Theis Grain Co.  
Kansas City, Missouri