



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

ARBITRATION 1565

Plaintiff: Farmers Union Grain Terminal Association, St. Paul, Minnesota

Defendant: Bird Grain Company, Inc., Elk Point, South Dakota

ARBITRATION 1567

Plaintiff: Bird Grain Company, Inc.

Defendant: Farmers Union Grain Terminal Association

Statement of Case

In the Arbitration Case 1565, the Plaintiff bought 87,000 bushels of oats to be delivered via truck by the Defendant to Sioux City and Minneapolis. The Defendant delivered 51,238.48 bushels of oats leaving an open balance of 35,761.52. The Defendant claims that the Plaintiff would not accept delivery during the shipping period. The Defendant notified the Plaintiff in writing on Thursday, October 16, 1980, that if the Plaintiff was not prepared to accept the undelivered oats by October 20, 1980 (Monday) the contract would be terminated. The letter was not received until Wednesday, October 22, 1980. The Plaintiff claimed \$18,865.58 or \$26,375.27 depending on cancellation date for incomplete delivery on the oat contract.

The buyer issued contracts, but seller did not and all contracts have in bold type, "May be discounted for late shipment." In addition, the buyer's contract had additional terms and conditions concerning non-delivery.

The Defendant believed Trade Rule 10 could apply to this issue, but thought they did not owe Plaintiff because Plaintiff's inability to accept delivery or make arrangements for alternative delivery.

In Arbitration Case 1567 the Plaintiff is claiming for money due on 13,380.35 bushels of corn delivered on Defendant's purchase contract 12-8587. The Defendant offset the \$26,375.27 owed on oat contracts against the \$38,567.50 due on corn less \$39.53 for damage discount on another transaction. The Plaintiff is claiming that the Defendant owes \$38,640 less the \$2,666.57 paid on 11/7/80, plus interest because the Defendant had no right of offset. The Defendant is claiming a right of offset.

Decision

The facts presented by both sides show that GTA, Sioux City, was not able to receive the oats during the contract period. It was not proven beyond any reasonable doubt that the Defendant could not or would not have delivered during the contract period. Both parties considered the contract extended since they applied September

deliveries on August shipment contract and applied September against August/September shipment when nothing had been applied against August shipment contract. The committee found both parties were wrong in referring to Grain Trade Rule 10, as it deals with shipment contracts. Grain Trade Rule 11 deals with delivery contracts. The committee found the Plaintiff's contracts would govern as they were the only ones written and mailed. It was the committee's thinking that since both admitted trying to make or take delivery into mid-October that neither party considered the other in default or took action to notify the other that the contract was not in force. The committee thought that the Plaintiff should have known it had contract problems when it refused to unload four loads on September 15, 1980, and still had August shipment open. Since both Plaintiff and Defendant let the matter continue until October 22, 1980, fairness requires the balance due on the oat contract be cancelled basis the market of October 23, 1980.

The market for truck delivery oats in Sioux City on October 23, 1980, was \$1.75 and \$1.95½ delivered Minneapolis, as documented by historical records of three firms in Sioux City and two firms in Minneapolis.

<u>Contract</u>	<u>Underfill</u>	<u>Contract Price</u>	<u>Cancellation Price</u>	<u>Amount</u>
280747	18637.19	1.42-1/2	1.75	\$ 6,057.09
284286	15000.00	1.40	1.75	5,250.00
284327	2001.86	1.36-1/2	1.75	770.56
12-8638	122.47	1.80-1/2	1.95-1/2	18.37
				<u>\$12,096.02</u>

The Defendant, Bird Grain Company, Inc., will pay the Plaintiff, Farmers Union Grain Terminal Association, \$12,096.02 in settlement of the oat contracts plus interest.

In Arbitration Case 1567 the committee ruled in favor of the Plaintiff. The committee found Rule 33, Balances, addresses the issue. Because of the fact that the oat contract was in dispute at the time, a right of setoff was disallowed. The Plaintiff had performed on the corn contract and should have been paid promptly.

The Plaintiff was due	\$ 38,640.00
Less: Inspection 14 loads @ 5.15	\$ 72.10
Payment of 11/7/80	2,666.57
	<u>2,738.67</u>
	\$ 35,901.53
Less Damage Discount	<u>39.63</u>
	\$ 35,861.86
Less Check Issued Not Cashed	<u>9,652.93</u>
Balance Due on Corn	\$ 26,208.93

The committee believes the damage discount should have been handled separately with a letter explaining the clerical error. The committee allowed the deduction only because it was agreed by both parties that it was an error. The committee believes that the check for \$9,652.93 was payment and could have been cashed by the Plaintiff. Since it was the Plaintiff's, Bird Grain Company's choice not to cash it, no interest is due. Bird Grain Company should cash the check if negotiable or Farmers Union Grain Terminal Association should reissue check for same amount. In addition, the Defendant owes the Plaintiff \$26,208.93.

Since the two arbitration cases were handled by one committee, it found that Farmers Union Grain Terminal Association should settle with Bird Grain Company, Inc. as follows:

Due on Corn	\$ 26,208.93
Due on Oats	<u>(12,096.02)</u>
Total	\$ 14,112.91*
*Plus interest	

As previously stated, Bird Grain Company should cash the check for \$9,652.93 if negotiable or Farmers Union Grain Terminal Association should reissue check for same amount.

*Interest to be figured on \$14,112.91 @ 18.67 per annum (Average of prime rate for past 13 months.) from 11/8/80 (Ave. settlement date) until date of payment.

Submitted with the consent and approval of the Committee, whose names appear below:

Richard McWard, Chairman
Bunge Corporation, St. Louis, Missouri

John W. McCulley
Oakville Feed & Grain, Inc., Oakville, Iowa

Edward Balsiger
North Pacific Grain Growers, Inc., Portland, Oregon