



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

April 29, 1982

ARBITRATION CASE NO. 1569

GULF COAST GRAIN, INC. - Plaintiff vs. CENTRAL STATES ENTERPRISES - Defendant
CENTRAL STATES ENTERPRISES - Cross-Plaintiff vs. THE PILLSBURY COMPANY - Cross-Defendant
THE PILLSBURY COMPANY - Cross-Plaintiff vs. AGRI INDUSTRIES - Cross-Defendant

In accordance with the testimony and the facts disclosed by competent evidence, and pursuant to the rules, regulations, usages, and customs of the National Grain and Feed Association presently in force and described in "Trade Rules and Arbitration Rules" as amended March 26, 1981 and effective April 25, 1981, the following decision and award is rendered.

THE CLAIM AND COUNTER CLAIMS

On April 8, 1980, Gulf Coast Grain, Inc. sold Central States Grain and Trading Company 260,000 bushels of No. 2 yellow corn at plus .19 cents per bushel over the Chicago May option delivered the gulf.

Under the terms of the contract, the shipment period was last half May 1980. The contract further provided that subject corn was to be delivered to the gulf in 25, 50, or 75 unit hopper cars via the CNW, MILW, or Rock Island railroads.

On May 27, Gulf Coast tendered a unit train, MILW 72-6 ex Hartley, Iowa, to Central States in satisfaction of its contract. Central States refused to give billing instructions to a gulf destination allowable under the railroad tariff that governed the designated unit train.

On May 29, 1980, Gulf Coast sold MILW 72-6 on the open market at plus 2 1/2 cents per bushel over the Chicago July option. Gulf Coast further sold out the futures at 2.76 per bushel which established a flat price cancellation of 2.78 1/2 per bushel for the train.

Cross-Plaintiffs Central States and The Pillsbury Company were in the "string" with Cross-Defendant, Agri Industries, being the ultimate buyer. Agri Industries gave Ama, Louisiana as a destination against the tendered train. Agri Industries claims they had a right to name Ama, Louisiana as a gulf destination under the terms of their contract.

Plaintiff and Cross-Plaintiffs have made claims as follows:

Plaintiff - Gulf Coast Grain, Inc.
\$21,450 plus interest, brokerage cost and cost of arbitration.

Cross-Plaintiff - Central States Enterprises
\$32,500 plus interest, brokerage cost and cost of arbitration.

Cross-Plaintiff - The Pillsbury Company
\$31,850 plus interest, brokerage cost and cost of arbitration.

TEXT OF THE DECISION

The Committee determined that Gulf Coast fulfilled its contract obligation by tendering a MILW 75 car unit train within the contract period. All contracts in the "string" allowed Gulf Coast to ship via the CNW, MILW, or RI at seller's option. The Defendant's purchase contract and all subsequent purchase contracts in the "string" required gulf delivery without specificity as to destination port. The Committee found no deception on the part of Plaintiff or Cross-Plaintiffs. All parties traded under railroad tariff provisions. Unfortunately, the MILW railroad changed their tariff disallowing Ama, Louisiana as a gulf port destination ex Hartley, Iowa.

The Committee clearly felt that custom of trade regarding the definition or understanding of the term "gulf" has implied billing to a destination within the applicable tariff of the tendered unit. The best example of this understanding is contained in Defendant Agri Industries answer to cross-complaint.

"The buyer has the option to select the Gulf port destination, but *at all times has the responsibility to give the Seller billing instructions to a port that was included in the railroad tariff that governed the *designated unit train-tendered by the Seller to the Buyer."

*(NOTE: Emphasis Added)

The Committee noted that two of the three railroads named as acceptable origins in this case are in bankruptcy. In addition, the Staggers Act allows railroads "short notice" tariff revisions. Given these facts, the Committee feels very strongly that companies must recognize the risks they are taking if delivery terms are not specific.

THE AWARD

The Arbitration Committee, based on its study and examinations of the testimony and competent evidence furnished to it, do hereby award to Plaintiff Gulf Coast Grain, Inc. \$21,450 plus brokerage fee of \$650 plus interest at the rate of 16% on both amounts from May 30, 1980, until date of payment in full settlement of their claim against Central States Enterprises; to Cross-Plaintiff Central States Enterprises \$32,500 plus brokerage fee of \$650 plus interest at the rate of 16% on both amounts from May 30, 1980, until date of payment in full settlement of their claim against the Pillsbury Company; and to Cross-Plaintiff The Pillsbury Company \$31,850 plus brokerage fee of \$650 plus interest at the rate of 16% on both amounts from May 30, 1980, until date of payment in full settlement of their claim against Agri Industries.

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

Duane F. Stich, Chairman
Bunge Corporation, Minneapolis, Minnesota

Merrill E. Donoho
General Mills, Inc., Minneapolis, Minnesota

Thomas Weidner
The Andersons, Maumee, Ohio