



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

February 24, 1983

## Arbitration Case Number 1578

Plaintiff: West Central Cooperative, Ralston, Iowa  
Defendant: Continental Grain Company, West Des Moines, Iowa

Cross-Plaintiff: Continental Grain Company, West Des Moines, Iowa  
Cross-Defendant: Scoular-Bishop Grain Company, Kansas City, Missouri

Cross-Plaintiff: Scoular-Bishop Grain Company, Kansas City, Missouri  
Cross-Defendant: Gulf Coast Grain Company Inc., Memphis, Tennessee

Cross-Plaintiff: Gulf Coast Grain Company Inc., Memphis, Tennessee  
Cross-Defendant: The Pillsbury Company, Minneapolis, Minnesota

### Statement of Case

These interrelated cases involved a string of sellers and buyers, each of whom bought and/or sold 85,000 bushels of U.S. No. 2 yellow corn to be shipped from Iowa to a destination selected by the ultimate buyer. The West Central Cooperative of Ralston, Iowa, was the shipper from its Jefferson, Iowa, plant. The Continental Grain Company, Scoular-Bishop Grain Company and Gulf Coast Grain Company Inc. were the subsequent intermediate buyers and sellers in the string trade. The Pillsbury Company was the ultimate buyer in the string, with the unloading occurring at Clinton, Iowa, where 25 cars were unloaded directly into barges.

The trade dispute was triggered by an unexplained difference between origin and destination weights. That, in itself, did not warrant an arbitration action. However, the case was complicated by the fact that the original contract and subsequent contracts called for official destination weights, while certified destination weights were furnished. It was further complicated because during the time between the original contract date and the ultimate unloading of the grain covered by the contract, the use of the term "official weights" by others was preempted by the Federal Grain Inspection Service (FGIS). That action forced all non-FGIS weighing supervision agencies to cease using the term, even though they maintained the same supervision procedures. In the grain trade, the generally accepted substitute term is "certified weights."

The Plaintiff claimed that since official weights at destination were not furnished, official weights at origin should apply and that the Plaintiff should be reimbursed for the 38,800 pound loss it incurred because of the weight disparity.

The basis for the Plaintiff's claim was the Defendant's lack of compliance with Grain Trade Rule 21 (b) -- weights -- which was quoted only in part: "*Grain sold basis official destination weights may not be diverted by buyer to a destination where official weights are not available except with the permission of the seller.*"

The Plaintiff further contended that contracts that are to be fulfilled after a known change in term definition should use the definition in effect at the time of shipment. The Plaintiff also contended that the contract was written basis delivered Kansas City, and not Clinton, Iowa.

### The Decision

Since Trade Rule 21(b) was the basis of the claim, it was important to carefully review the complete rule and any reference rules that were in effect and utilized by the trade at the time the original contract was made (March 18, 1981). One part of that rule stated: *"On grain sold basis official destination weights, it shall be the duty of the buyer to furnish billing instructions to a destination where official weights are available, as described in Rule 2(C)." Rule 2(c) states: "An official weight shall be any weight that is obtained by an approved weigher using an approved scale, both the weigher and the scales being under the general supervision of a disinterested supervisory agency. The weight shall be documented by a certificate which under the rules of the Association of American Railroads is accepted by the railroads for claim purposes at 100 percent less tariff tolerance."* The unloading weights furnished satisfied this rule. Therefore, the arbitration committee determined that the Defendant did fulfill the contract terms as they relate to supplying "official destination weights" and as defined by the Trade Rules in effect at the time the contract was made.

The committee did not agree with the Plaintiff's statement that contracts that are to be fulfilled after a known change in term definition should automatically use the definition in effect at the time of shipment. While the impending action of FGIS generally may have been known, the fact is that the Trade Rules, including the redefining of terms, were not amended until March 26, 1981 (eight days after the contract was made). The committee believed it was not proper to assume yet-to-be-approved rules would automatically apply to a contract unless specifically provided for in the contract terms. If the Plaintiff were confident of the impending change, it could have provided for it in the contract. Such a provision was not made.

The Plaintiff's claim to use origin rather than destination clearly is outside the spirit of the contract and represents something far more significant than the difference between "official" and "certified" weights at a specific interior point.

The arbitration committee does not agree with the Plaintiff's claim that the contract was written basis delivered Kansas City. It is written price basis Kansas City, and as such it is merely a pricing mechanism only to allow a grain merchandiser to establish a readily known freight relationship. The Defendant, therefore, was not confined to a Kansas City destination.

For these reasons, the committee rules in favor of the Defendant and denies any claims to the Plaintiff. All subsequent contracts in the string were made after the March 26, 1981 amendments. However, by the arguments of the participants when they were in a Defendant position, it is clear they had no problem whatsoever with the substitution of the term "certified" for "official" weights. Therefore, the committee ruled in favor of the Defendants in all cross-suits, with no awards to any party involved in the entire string trade.

T.L. Sam Irmen, Chairman  
The Andersons, Maumee, Ohio

Harvey P. Myers  
Stonington Cooperative Grain Company, Stonington, Illinois

Robert S. Cartmill  
Lincoln Grain Inc., Lincoln, Nebraska