



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

February 17, 1983

## Arbitration Case Number 1579

Plaintiff: Louis Dreyfus Corporation, Stamford, Connecticut

Defendant: The Pillsbury Company, Minneapolis, Minnesota

Cross-Plaintiff: The Pillsbury Company, Minneapolis, Minnesota

Cross-Defendant: Central States Enterprises Inc., Fort Wayne, Indiana

### The Facts

On August 12, 1980, Central States Enterprises Inc., sold to The Pillsbury Company one 100-car Norfolk and Western train of No. 2 yellow corn F.O.B. Ohio points, with appropriate differentials from Illinois and Indiana points, for shipment December 1-20, 1980. Although no mention was made of the appropriate freight tariff, the only applicable freight tariff allowed four cuts of cars to be placed at origin at no cost. No mention was made in the transaction of responsibility for tariff changes.

On November 14, 1980, The Pillsbury Company sold to Louis Dreyfus Corporation an identical train of No. 2 yellow corn. Again, no mention was made of the applicable freight tariff. The same tariff, with the same terms, was still applicable. But notice had been given that, effective November 19, 1980, the tariff would be changed to allow only one free cut of cars at origin, with charges for additional cuts. The only mention of responsibility for freight rate changes was in the buyer's confirmation, which stated any increases in freight rates would be for the account of the buyer.

Subsequently, Louis Dreyfus was advised by Pillsbury that the train would be shipped by Central States Enterprises Inc. Appropriate instructions were given and shipment was made on December 16, 1980 from Ft. Wayne, Indiana. The train was placed in three cuts at origin, resulting in a charge of \$2,500.

### The Issues

The major issues arising in this case are as follows:

- In an F.O.B. origin transaction, where not only the freight rate changes between the time of the agreement and its execution, but also the rules change regarding switching charges, who is responsible for switching

charges resulting from actions which would have been free under the switching rules in effect at the time of the original transaction but were changed by the time of shipment?

--In a "string" transaction, does the middle man in the transaction bear any responsibility for subsequent charges?

#### The Majority Decision

It is the custom of the trade that transactions are governed by the freight tariff in effect at the time of shipment, unless specifically stated otherwise in the contract. In this case, the only reference to this situation is a statement in the Plaintiff's confirmation stating freight increases were for the account of the buyer. Because the transaction was F.O.B. origin, collateral charges incurred beyond the control of the buyer are the responsibility of the seller, based upon the freight tariff in effect at the time of shipment.

Concerning the primary issue -- assuring that the shipment was tendered according to the contract -- was the responsibility of the seller, The Pillsbury Company. The fact that the shipment was not actually made by the Defendant does not alter the relationship between the parties. Thus, judgment is granted to the Plaintiff, Louis Dreyfus Corporation, in the amount of \$2,500.

In the cross-complaint, the responsibility is the same -- the seller must prepare the shipment for tender according to the contract. Accordingly, judgment is granted to the Cross-Plaintiff, The Pillsbury Company, in the amount of \$2,500.

Reeder C. Miller, Chairman  
A.E. Staley Manufacturing Company, Decatur, Illinois

Dean Carlson  
Cargill Inc., Chesapeake, Virginia

#### The Minority Decision

It is clear that the custom of the trade fixes the responsibilities of the parties by the conditions that exist at the time the contract is made. In this case, the Cross-Defendant, Central States Enterprises Inc., complied with the terms as they existed when the contract was made. Thus, any cost resulting from the activities are the responsibility of the buyer. Therefore, the \$2,500 switching charge is a cost to the Plaintiff, Louis Dreyfus Corporation.

Although it is clear the middle man in a transaction is not excused from liability, even though they do not actually perform under the contract, the question is moot in this particular case. Thus, while The Pillsbury Company has all the responsibilities of the seller to Louis Dreyfus Corporation and of the buyer to Central States Enterprises Inc., no award should be made.

Roger Larkin  
Tidewater Grain Company, Philadelphia, Pennsylvania

Arbitration Case Number 1579

Decision of the Arbitration Appeals Committee

Appellant: Central States Enterprises Inc., Fort Wayne, Indiana

Appellee and Cross-Appellant: The Pillsbury Company, Minneapolis, Minnesota

Cross-Appellee: Louis Dreyfus Corporation, Stamford, Connecticut

The Arbitration Appeals Committee reviewed all written evidence submitted in Arbitration Case Number 1579, and reviewed the findings and conclusions of the original arbitration committee. The Arbitration Appeals Committee unanimously agreed with the findings of the majority of the original arbitration committee, which awarded payment of \$2,500 to the Cross-Appellee, Louis Dreyfus Corporation, by the Appellee and Cross-Appellant, The Pillsbury Company. The committee also awarded payment of \$2,500 to the Appellee and Cross-Appellant, The Pillsbury Company, by the Appellant, Central States Enterprises Inc.

The Arbitration Appeals Committee agreed that increases in accessorial charges, such as demurrage and switching charges, do not constitute an increase in freight rates.

An increasing number of arbitration cases involve string trading. Therefore, the Arbitration Appeals Committee wishes once again to emphatically state that no matter how many buyers or sellers are involved in a string trade, each and every party to a trade individually is responsible to the other party or parties with which it is trading -- first buyer to first seller -- ad infinitum. This responsibility cannot be transferred to third parties, unless by mutual agreement.

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

Charles Holmquist  
Holmquist Elevator Company, Omaha, Nebraska

Clayton Johnson  
Midstates Terminals, Toledo, Ohio

Royce Ramsland  
The Quaker Oats Company, Chicago, Illinois

W.C. Theis  
Simonds-Shields-Theis Grain Company, Kansas City, Missouri