



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

October 20, 1988

Arbitration Case Number 1641

Plaintiff: Mid-States Terminals Inc., Toledo, Ohio

Defendant: Ittner Bean and Grain Inc., Auburn, Mich.

Statement of the Case

The plaintiff and defendant are, via a string of companies, involved in a contract for one 65-car C&O train (227,500 bushels) of U.S. No. 2 yellow corn for Oct. 25-Nov. 10, 1986 shipment in buyer's freight. The plaintiff was the shipper and the defendant was responsible for placement of the train. According to the facts provided by both the plaintiff and defendant, the train was placed outside of contract terms.

The dispute in this case did not involve whether damages should be assessed for late placement of the train. Instead, it involved the appropriateness of the late charges assessed by the plaintiff and the length of time until the defendant performed. The plaintiff, in an attempt to exercise NGFA Grain Trade Rule 10, notified the defendant on Nov. 10 via the string of buyers that late charges of 5-cents-per-bushel-per-day would be assessed. The defendant responded on Nov. 10 that these charges were unacceptable and countered that it would agree to a late charge of 1/10th-cent-per-bushel-per-day, with applicable interest charges at the prime rate plus 1 percent.

The second dispute in this case -- pertaining to the length of time until performance -- involved a disagreement as to when the train actually was ready for loading at Mid-States' facility. Ittner Bean and Grain stated the train was available on Nov. 13, with Mid-States arguing that placement did not occur until Nov. 15.

The Decision

In response to the second dispute, the consent from Grand Truck Western Railroad shows the equipment was available to Mid-States terminals for placement on Nov. 13. Mid-States claimed it was unaware of this fact until it had loaded some of these cars for another mar-

ket. This, however, has no bearing on the decision. Because the equipment was available Nov. 13, the arbitration committee decided that late charges should cease on that date.

The main dispute -- involving the severity of the late charges -- centered on the actual costs and opportunity costs incurred by Mid-States. With the train available on Nov. 13, Mid-States' contention that it was forced to pile grain on the ground appeared to be a decision of its own making and unrelated to the train in question. In addition, Mid-States' statement that it was unable to receive grain during this period was unfounded, with scale tickets showing unload dates corresponding to the dates in question. Mid-States also failed to demonstrate market-related losses caused by the late arrival of the train.

Therefore, the arbitration committee ruled unanimously in favor of the defendant, concluding that the damages previously paid were appropriate, and no further damages should be awarded.

Submitted with the consent and approval of the arbitration committee, whose names are listed below:

Mark Palmquist, chairman
Harvest States Cooperatives
St. Paul, Minn.

Don Vogt
Cargill Inc.
Minneapolis, Minn.

Mike Greer
Louis Dreyfus Corp.
Chicago, Ill.

Arbitration Appeals Case Number 1641

Appellant: Mid-States Terminal Inc., Toledo, Ohio

Appellee: Ittner Bean and Grain Inc., Auburn, Mich.

The Arbitration Appeals Panel, individually and collectively, reviewed all evidence submitted in Arbitration Case No. 1641. It also reviewed the findings and conclusions of the original Arbitration Committee.

The Arbitration Appeals Panel decided unanimously to reverse the findings of the original arbitration decision concerning the late charges assessed.

This Case involved two disputes:

- The amount of late charges and damages to be assessed for late placement of the train; and
- The date the train was placed.

The Arbitration Appeals Panel agreed with the original arbitration decision that the train was placed on Nov. 13, and that late charges should cease on that date. However, in reversing the original arbitration decision on the late charges issue, the Arbitration Appeals Panel found that the appellee, Ittner Bean and Grain, did not take the steps necessary to bring itself into contract compliance. Nor did it prove the penalty was unreasonable. The arbitration panel believed the penalty for an extension of a contract may differ under different conditions. The appellant stated no other trains were available and the appellee confirmed this action taken in placing the train late. With no trains available, it would be difficult to establish a "fair market value." This also serves to point out that this dispute did not occur under normal circumstances. The appellee's offer was for "typical industry late charge," which did not fit the situation involved.

In arriving at this decision, the Arbitration Appeals Panel did not indicate that a 5-cent-per-bushel-per-day penalty always is reasonable, or even would be reasonable in this case for an unlimited number of days. But considering the market conditions at the time, the panel thought three days at 5-cents-per-bushel-per-day was not unreasonable.

Therefore, the Arbitration Appeals Panel overturned the original arbitration decision and awarded the Appellant, Mid-States Terminals Inc., \$34,589.87 (230,599.11 bushels multiplied by \$0.15) less \$969.10 previously paid, for a total of \$33,620.77, plus interest at 1 percent over the prime rate from the date of the original settlement until the payment of the award.

Richard A. McWard, *chairman*
Bunge Corp.
St. Louis, Mo.

Thomas Feldmann
West Central Cooperative
Ralston, Iowa

John L. McClenathan
GROWMARK Inc.
Bloomington, Ill.

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

Howard Wright
Baltic Mills Inc.
Vincennes, Ind.