



Arbitration Decision

National Grain and Feed Association

May 17, 1990

Arbitration Case No. 1664

Plaintiff: Rickel Inc., Kansas City, Mo.

Defendant: Centerville Grain and Seed Co., Centerville, Iowa

Statement of the Case

On July 8, 1988, the plaintiff, Rickel Inc. purchased from USDA's Commodity Credit Corporation 30,803.24 bushels of corn in-store at Centerville Grain and Seed Co.'s elevator at Centerville, Iowa. That same day, Rickel Inc. sent to Centerville Grain and Seed Co. a contract to deliver the CCC-owned corn which spelled out the amount of the load-out charges due Centerville Grain and Seed Co. and the discount and premium scale based upon destination weights and grades.

Centerville Grain and Seed Co. did not sign and return the contract. It objected to destination weights and grades, wanting instead to use origin weights and grades.

The first seven loads were delivered to Garnac Grain Co. at Burlington, Iowa, and the balance were delivered to Continental Grain Co. at Muscatine, Iowa. Rickel Inc. supplied their truck delivery receipt forms to Centerville Grain and Seed Co., asking that they be completed for each load. These forms were completed by Centerville Grain and Seed Co., showing the origin weights and grades for only the first seven loads. Shipment was completed on Sept. 20, 1988.

The plaintiff on Dec. 7, 1988, sent a contract to the defendant to price the underfill of 42.54 bushels. The plaintiff on Dec. 22, 1988 sent the defendant a final settlement showing all weights and grades and

an invoice in the amount of \$6,254.12. This invoice amount represented the underfill plus the grade discounts on the deliveries (using destination grades), minus the load-out charges and storage due to the defendant.

The Decision

The defendant, Centerville Grain and Seed Co., claimed that the arbitration case was filed late. Arbitration Rule 5(a) allows filing of cases within 12 months after the expiration date for performance of the contract. The filing of this case was within this time frame.

The defendant also claimed that the contract with the plaintiff was invalid because it did not sign and return the contract. Further, the defendant claimed to have denied the terms of the contract by phone.

Grain Trade Rule 6 (a) and 6 (c) state that if only one party sends a confirmation, it will be binding upon the other party unless the confirming party has been notified immediately by wire or telephone with confirmation in writing.

The pertinent Grain Trade Rule is reprinted below:

"Rule 6.

a) Confirmation: It shall be the duty of both Buyer and Seller, not later than the close of

business day following date of trade, to mail each to the other, a confirmation in writing (the Buyer a confirmation of purchase, and the Seller a confirmation of sale) setting forth the specifications as agreed upon in the original articles of trade. Upon receipt of said confirmation, the parties thereto shall carefully check all specifications named therein and, upon finding any differences, shall immediately notify the other party to the contract, by wire, or telephone and confirm in writing, except in the case of manifest errors and differences of minor character, in which event, notice by return mail will suffice....

"(c) If either Buyer or Seller fails to send out confirmation, the confirmation sent out by the other party will be binding upon both in case of any dispute, unless confirming party has been immediately notified by nonconfirming party, as described in 6(a), of any disagreement with the confirmation received."

No evidence was presented in this case to demonstrate that **Grain Trade Rule 6 (a)** and **6 (c)** were adhered to by Centerville Grain and Seed Co.

The arbitrators, therefore, ruled unanimously in favor of Rickel Inc. in the amount of \$6,254.12, plus interest at the rate of 11 percent per annum from Dec. 22, 1988.

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

Larry Milts, chairman
Morrow County Grain Growers Inc.
Lexington, Ore.

Robert W. Rudy
Rudy Inc.
Covington, Ohio

Rich Thayer
Cargill Inc.
Chattanooga, Tenn.