Arbitration Decision
National Grain and Feed Association
January 2, 1992

Arbitration Case No. 1682

Plaintiff: The American Milling Co., Wood River, Ill.
Defendant: Dairy Feeds Inc., Okeechobee, Fla.

Statement of the Case

The plaintiff, The American Milling Co., contracted to sell the defendant, Dairy Feeds Inc., 130 cars of hominy feed for shipment of five cars each week beginning Oct. 2, 1989 through March 31, 1990.

Shipments were made somewhat on schedule through the middle of November 1989. After that time, American Milling started shipping at a rate far exceeding the contract terms. Dairy Feeds Inc. incurred large demurrage expenses — totaling $42,250 — because of this accelerated shipment pace without any notification of the accelerated pace. The demurrage amount was deducted from the last invoice of the American Milling Co.

The American Milling Co. denied Dairy Feeds Inc.'s contention and asked that the arbitrators award $42,250, plus interest from April 25, 1990.

The issue raised in the case is: "Does The American Milling Co. have the right to change the terms of delivery without providing notification to Dairy Feeds Inc., and is the American Milling Co. liable for the demurrage costs incurred because of the change in the contract without providing notification to Dairy Feeds Inc.?"

The Findings

The arbitrators made the following assumptions:

- The plaintiff, The American Milling Co., changed the contract terms without providing proper notification to Dairy Feeds Inc., then tried to conceal the fact by not providing Dairy Feeds Inc. with car numbers.

- The defendant, Dairy Feeds Inc., did not realize that The American Milling Co., was accelerating the shipping schedule until the cars arrived and demurrage expenses began mounting.

- Neither party followed proper procedures concerning alerting the respective party in writing as to any changes in the terms of the contract.

The Decision

The arbitrators found in favor of Dairy Feeds Inc., thereby denying The American Milling Co.'s claim for $42,500, plus interest.

The decision was based upon Feed Trade Rules 14 and 23. Feed Trade Rule 23 states that a contract only can be changed with consent and in writing, neither of which occurred in this case.

Feed Trade Rule 14 states that if the seller fails to ship as required by the contract and fails to provide legitimate car numbers evidencing proper shipment on the contract, the seller is liable for all extra costs and expenses.

The arbitration committee believed that Dairy Feeds Inc. should have paid the original invoice, then billed The American Milling Co. for the demurrage and costs incurred. The decision would not have changed if that had occurred, but the case would have been somewhat cleaner in that Dairy Feeds Inc. would have had to instigate the arbitration.

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

Michael Loy, *Chairman*
Provico Inc.
Botkins, Ohio

H. Lloyd Good
American Maize-Products Co.
Chicago, Ill.

John C. Sharpe
Sunshine Feed and Grain Co. Inc.
Buffalo, N.Y.

Arbitration Appeals Case Number 1682

Appellent: The American Milling Co., Wood River, Ill.
Appellee: Dairy Feeds Inc., Okeechobee, Fla.

The Arbitration Appeals Committee individually and collectively reviewed all the evidence submitted in this case, as well as the conclusions of the original arbitration committee. The Arbitration Appeals Committee generally agreed with the conclusions of the original arbitration committee, but differed on the amount of the award.

The Arbitration Appeals Committee found that the original demurrage settlement of $42,250 was excessive for the following reasons:

- Demurrage was awarded on cars that were not shipped early and, therefore, did not incur demurrage.

- Demurrage was calculated using values for excess chargeable days, which exceeded the values of early shipment days. Dairy Feeds Inc. commingled its existing demurrage problem (not caused by American Milling carloads) with the problem resulting from The American Milling Co.'s early hominy shipment.

- Demurrage was awarded for cars the CSX Railroad erroneously billed to Dairy Feeds Inc., and which that firm erroneously paid.

For these reasons, the Arbitration Appeals Committee decided to recalculate the demurrage using the following guidelines:

- An "Implied Scattered-Even Shipment" schedule was generated and was based on five carloads per week, as specified in the contract. One carload per day, Monday through Friday, was used throughout the applicable demurrage shipping period.

- The actual bill of lading dates, in chronological order of shipment, were paired with the implied schedule to determine early shipment (in days). Only early shipment carloads were used to determine demurrage.

- To eliminate overcharges by Dairy Feeds Inc., the maximum allowable number of excess chargeable demurrage days per car was limited to the number of days shipped early. In cases where the excess days per car were less than the early shipment days, those values were used.

- The credit days, as calculated by the CSX Railroad and Dairy Feeds Inc., were used as originally submitted.

The Decision

The Arbitration Appeals Committee decided that both The American Milling Co. and Dairy Feeds Inc.'s improper actions caused the demurrage problem, but that the two firms' liability differed.

The American Milling Co. initiated the problem by shipping early and thus forced Dairy Feeds Inc., through no fault of its own, to take remedial action to solve a problem it did not cause.

Feed Trade Rule 23 states that a contract "...cannot be altered or amended without the expressed consent of both the Buyer and Seller." Feed Trade Rule 14 states that, "...should the Seller fail to ship as required by the contract and fail to provide legitimate car numbers evidencing proper shipment on the contract, then the Seller is liable for all extra cost and expenses as shall have been incurred..." The American Milling Company violated both rules, whereas Dairy Feeds Inc. only failed to "elect to exercise" its remedies under Feed Trade Rule 14.

The Arbitration Appeals Committee recalculated the demurrage and determined that the total demurrage liability should be $34,900. The Arbitration Appeals Committee unanimously agreed that The American Milling Co. was liable to Dairy Feeds Inc. for 67 percent of the calculated demurrage, which amounted to $23,383. Since Dairy Feeds Inc. withheld payment of $42,500 from the American Milling Co., Dairy Feeds Inc. owed The American Milling Co. the difference between $42,500 and $23,383, or $19,117, plus interest from April 25, 1990 at the interest rate of 9.25 percent until payment is made.

Robert Obrock, *Chairman*
Farmers Commodities Corp.
Perrysburg, Ohio

L. Scott Hackett
General Mills Inc.
Minneapolis, Minn.

Dan Miller
Kokomo Grain Co.
Kokomo, Ind.

John W. McCulley Sr.
Oakville Feed & Grain Co.
Oakville, Iowa

Wellington White
O.H. Kruse Grain & Milling Co. Inc.
Ontario, Calif.