



# Arbitration Decision

National Grain and Feed Association

October 13, 1994

## Arbitration Case Number 1707

**Plaintiff: Afec-Plexchem, Inc., Houston, Texas**

**Defendant: Bartlett & Co., Kansas City, Mo.**

### Statement of the Case

On Aug. 24, 1993, Afec-Plexchem, Inc. (API) sold to Bartlett & Co. (Bartlett) 250 tons of wheat middling pellets for immediate shipment to be loaded at the flood damaged facilities of ConAgra Inc. in Alton, Ill.

The buyer was unable to provide 10 trucks for immediate loading, and the mill ceased loading 24 hours after the contract was made. The two parties mutually agreed to change the shipping date to about Sept. 1, 1993 and the F.O.B. point to Chester, Ill. The buyer sent at least five trucks to load on Sept. 2-4, 1993, but was unable to load and incurred "holding time" (demurrage) charges in the amount of \$1,320.

The seller -- as stated on the sales contract -- mitigated this loss by later selling the buyer 60 tons of loose midds at \$10 per ton under the buyer's bid, an amount totaling \$600. Three cars were shipped at later dates to fulfill the contract.

A truckload of midds was rejected at destination and was brought back to Chester, Ill., and resold by the plaintiff for its account.

The plaintiff sought damages amounting to \$3,530.54, plus interest and expenses, to compensate for unpaid invoices dated Sept. 22 and Oct. 27, 1993. This arbitration case never would have been filed if the demurrage issues had been resolved and the outstanding invoices paid.

The defendant's counterclaim asked for:

- \$910.91 for dead freight on the three cars applied to the contract;

- truck demurrage amounting to \$1,320 based upon the carrier invoices presented; and

- freight of \$20 per ton each way on the load of midds rejected at destination, in addition to \$10 per ton freight from Chester, Ill., to the final destination of the load. The total amount claimed for this truckload was \$1,243.50.

### The Decision

The arbitrators made the following findings and determinations in this case:

- The original contracts between API and Bartlett, dated Aug. 24, 1993 contained discrepancies on the shipment period. API's contract stated "Prompt," Bartlett stated "Wk 8/23/93" and the broker (Nellis Feed Co.) stated "immediate."

The applicable NGFA Trade Rule in this regard is Feed Trade Rule 2(b), "Confirmation," which states: "When a trade is made through a broker, it shall be the duty of the broker, not later than the close of business day following date of trade, to send a written confirmation to each of the principals (to the Buyer a confirmation of purchase and to the Seller a confirmation of sale) setting forth the specifications of the trade as made by him. 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, and the broker, by wire or telephone, and confirm in writing. Lacking such notice the contract shall be filled in accordance with the terms of the confirmation issued by the broker." [Emphasis added.]

■ Neither party could perform within the contract shipment period and it mutually was agreed to extend the shipment period and change the F.O.B. point to Chester, Ill. Although the buyer displayed an unwillingness to allow the seller to perform, no infraction took place because the contract had been extended by mutual agreement.

■ The plaintiff agreed to assume responsibility for truck demurrage charges incurred on Sept. 2, 3 and 4 -- totaling \$1,320. Of this amount, \$600 was mitigated by selling the defendant 60 tons of loose midds at \$10 per ton under the buyer's bid, as stated on the sales contract. Bartlett was due the \$720 balance.

■ The arbitrators believed that the unusual conditions that existed at the loading facilities did not allow the seller to control the loading of cars to the desired weight. The seller gave the buyer the choice of whether to take the third car. Two cars filled the contract to within 2 percent of the target contracted. Therefore, the defendant's claim for \$910.91 dead freight was denied.

■ Bartlett's claim for \$20 per ton freight to the original destination and \$20 per ton freight to bring the load back to Chester, Ill., was denied because of a lack of evidence that Bartlett notified API in a timely manner. NGFA Feed Trade Rule 13(b), "*Condition Guaranteed Upon Arrival*," is applicable, and states: "*It shall be the duty of the Buyer to ascertain by inspection or other means and report the condition of the shipment not later than 12 noon of the second business day after*

*arrival at final destination, otherwise Seller's liability ceases at the expiration of such time.*"

■ Bartlett's claim for \$10 per ton on 24.87 tons was upheld because the load was applied on an API sale and Bartlett paid the freight from Chester to Vandalia. Thus, Bartlett was entitled to \$248.70.

## The Award

API's claim of \$3,530.54 is reduced by the following amounts:

- 720.00 for truck demurrage due Bartlett.
- 248.70 truck freight from Chester to Vandalia due Bartlett.

After making these adjustments, the net amount due to API from Bartlett is \$2,561.84.

Considering the many discrepancies and the lack of sufficient evidence, no interest was awarded to either party.

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

**James B. Buchanan**, *Chairman*  
Illinois Cereal Mills Inc.  
Paris, Ill.

**Jim Chastain**  
The Scouler Co.  
Overland Park, Kan.

**Larry Alley**  
Wendland's Farm Products, Inc.  
Temple, Texas

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