



# Arbitration Decision

National Grain and Feed Association

September 1, 1994

## Arbitration Case Number 1709

**Plaintiff:** Bruce Oakley Inc., North Little Rock, Ark.

**Defendant:** Benson-Quinn Co., Minneapolis, Minn.

### Statement of the Case

On June 17, 1993, Benson-Quinn Co. sold to Bruce Oakley Inc. one barge (55,537 15 bushels) of yellow corn. The contract terms were origin weights and origin grades with no discounts, sold "As Is." The grade factors for the barge were TW - 51.0, MST - 14.1, DMG - 2.4, & FM - 1.5. The basis of the contract was CIF Morrilton, Ark. This information is from the contract issued by Benson-Quinn, as no contract was submitted from Bruce Oakley Inc. The reverse side of the Benson-Quinn contract contained the following as paragraph 5:

"5. Grain sold "guaranteed cool and merchantable on arrival" must be examined and if found out of condition reported within twenty-four (24) hours after arrival; otherwise guarantee is void. Guarantee holds only to first destination of the grain. It shall be the seller's privilege when grain arrives out of condition to reship within a reasonable time at original contract price provided acceptable settlement cannot be agreed upon on the original car."

Benson-Quinn sent the invoice for 100 percent of the value on June 17, 1993, and this was paid by Bruce Oakley Inc. on June 18, 1993.

The Mississippi River was closed shortly after the shipment of this barge and thus, a timely delivery to Morrilton, Ark., was not possible. Bruce Oakley Inc. requested Benson-Quinn to assist in checking the quality of this barge on Aug. 17 and again on Aug. 30. This was arranged by Benson-Quinn, and the charges for the services were billed to Bruce Oakley Inc.

On Sept. 23, 1993, Bruce Oakley Inc. had the barge inspected at Prairie Du Chien, Wis. The barge graded "Sample Grade Yellow Corn, Musty Odor." Upon receiving this analysis, Bruce Oakley Inc. attempted to contractually reject the barge.

### The Decision

The terms of the contract applicable to this case are CIF Morrilton, Ark., origin weights, origin grades, and AS IS - No Discount. It is the decision of this arbitration committee that the defendant, Benson-Quinn, fulfilled its contractual obligation.

This was a grain contract, so the applicable rule for purposes of defining the passing of title is NGFA Barge Trade Rule 10(A), which provides:

*"With respect to grain: on FOB origin or FOB basing-point contracts, or CIF contracts at the time and place of shipment. The time is the moment of either: (1) the issuance by the carrier of a validated bill of lading in accordance with Seller's instructions; or (2) transmittal of wire, telex, or written shipping instructions by the Seller to the carrier in accordance with Buyer's instructions."*

Benson-Quinn did, in fact, instruct the carrier to issue this bill of lading and the same is dated June 16, 1993, with the destination as Morrilton, Ark. This determines the time of passing of title and risk of loss and/or damage to be for account of the buyer, Bruce Oakley Inc.

Paragraph 5 on the reverse side of Benson-Quinn's contract is not relevant to this case, as the grain was not sold "guaranteed cool and merchantable upon arrival." This paragraph is an explanation of the same term when it is a term of the contract.

## **Award**

The arbitrators found that the contract terms were fulfilled by Benson-Quinn, the seller-defendant. Since the plaintiff-buyer paid the seller's invoice in full on June 18, 1993, no further payment is due from either party to this case.

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

**Bill Schieber**, *Chairman*  
Garnac Grain Co. Inc.  
Kansas City, Mo.

**Lindsay Reid**  
McAlister Grain  
Friars Point, Miss.

**Tim Gallagher**  
Bunge Corp.  
St. Louis, Mo.