



Arbitration Decision

National Grain and Feed Association

July 17, 1997

Arbitration Case Numbers 1719 & 1757^o

Appellant: J. Aron & Company, New York, N.Y.

Appellees: Cargill Inc., and Cargo Carriers, Minneapolis, Minn.

Statement of the Case

The NGFA secretary assigned these two cases to the same NGFA arbitration committee since the cases involved similar issues and related parties. Both cases involved barge corn trapped on the Mississippi River during the 1993 Midwest floods. The grain aboard the barges was found to be damaged by infestation, heat and deterioration upon arrival at destination.

Case Number 1719 involved claims by the plaintiff against Cargill Inc. arising from the purchase of six barges of corn on C.I.F. New Orleans terms from Cargill Inc. on various dates in 1993 from various river origins. The plaintiff claimed damages in the amount of \$491,075.61, plus interest, costs and attorney fees.

Case Number 1757 involved claims by the plaintiff against Cargill Marine & Terminal Inc. ("Cargo Carriers") relating to eight barges¹ transported by the carrier, but purchased from various suppliers. The plaintiff claimed damages in the amount of \$536,460.82, plus interest, costs and attorney fees².

The Facts

In Case Number 1719, each shipment was purchased by J. Aron from Cargill on "C.I.F." terms. The plaintiff maintained that the defendant(s) had a duty to insure the cargo pursuant to NGFA Barge Trade Rule 11. It also was claimed that the flood of 1993 was the proximate cause of the cargo damage and that the carrier contracted by Cargill made no effort to protect the cargo.

The defendants asserted that Cargo Carriers was not the seller of the grain. The defendants submitted that a carrier is not liable for delay under the applicable provisions of the bill of lading contract and NGFA Barge Trade Rule 11. Further, the defendants asserted that Cargill Inc. as a seller of the grain, provided cargo insured bills of lading within the definitions set forth in NGFA Barge Trade Rule 11.

The Decision

The arbitrators first thoroughly reviewed the voluminous material submitted in this case. In reaching their

¹ The claims brought against Cargo Carriers involved five of the six barges on which claims also were asserted in Case Number 1719.

² The parties' arguments disclosed that the claims in these cases also have been subjected to litigation between J. Aron & Company and various marine insurers. *Great American Insurance Co., et al., v. J. Aron & Company Inc.*, Case No. 94 Civ. 4420, U.S. District Court, Southern District of New York.

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decision, the arbitrators also reviewed the parties' contracts and the NGFA Trade Rules³. Further, the arbitrators considered whether any trade custom was applicable to the facts presented.

NGFA Barge Trade Rule 4 expressly defines the term "C.I.F." for purposes of grain shipments made by barge. In addition, NGFA Barge Trade Rule 10 expressly addresses "C.I.F." barge trades and provides, among other things, that "unless otherwise specified by contractual agreement, title as well as risk of loss and/or damage, passes to the Buyer...at time and place of shipment." The arbitrators concluded that Cargill complied with its contractual duties under NGFA Barge Trade Rule 10, trade customs and practice. Title and risk of loss passed to the plaintiff at the time and place of shipment when the bills of lading were issued. Thus, as a seller-shipper, Cargill Inc. had no liability to the plaintiff for the damage or delays resulting from the flood of 1993.

NGFA Barge Trade Rule 11 expressly addresses the meaning of the terms "Cargo Insurance" or "Cargo Insured" bill of lading as used in the rules. As with many insurance-related issues, the "exclusions" set forth in the rule must be read and understood. Specifically, Barge Trade Rule 11 provides that:

"[T]here need not be protection for 1) shrinkage, expansion or other change to sound grain due to natural causes on sound grain; 2) loss, damage or deterioration resulting from delay in the delivery of the shipment and/or moisture content of the cargo itself;...." [Emphasis added]

Likewise, Section 9 of the actual bills of lading issued by Cargo Carriers provided, among other things, that "the carrier shall not be liable for delay in the delivery of the shipment, or for loss of, damage to, or any expense in connection therewith." The arbitrators concluded that the

express provisions of the bills of lading were consistent with the provisions of NGFA Barge Trade Rule 11. Thus, Cargo Carriers did not assume any greater liability by contractual provision than that provided for by the NGFA Barge Trade Rules based upon the facts and arguments presented in this case.

Consequently, as to those claims brought by the plaintiff against Cargo Carriers as the barge carrier, there also was no liability to the plaintiff arising from the express provisions of NGFA Barge Trade Rule 11. Loss, damage or deterioration resulting from the flood of 1993 is not a "loss" covered by "Cargo Insured" bills of lading issued in compliance with the NGFA Trade Rules.

The Award

The arbitrators found against the plaintiff, J. Aron & Company, as to all of its claims asserted against Cargill Inc. and Cargo Carriers in these cases. Each party is to pay its own costs of these proceedings.

Submitted with the unanimous consent of the NGFA arbitration committee, whose names are listed below:

Russell J. Kocemba, Chairman
Manager of Transportation
General Mills Inc.
Minneapolis, Minn.

Lindsay Reid
Executive Vice President
McAlister Grain
Friars Point, Miss.

Peter E. Hubbard
Senior Vice President
Midland Enterprises Inc.
Cincinnati, Ohio

³ As explained in the preamble to the NGFA Barge Trade Rules, those rules amend and supplement the NGFA Grain Trade Rules and NGFA Feed Trade Rules.

Appeals Decision

Arbitration Case Numbers 1719 and 1757

Appellant: J. Aron & Company, New York, N.Y.

Appellees: Cargill Inc., and Cargo Carriers, Minneapolis, Minn.

The Arbitration Appeals Committee, individually and collectively, carefully reviewed the findings and conclusions of the original arbitrators, along with the voluminous evidence and arguments submitted by the parties in these consolidated cases¹.

While the committee was unanimous in the result reached in this case, the committee members differed slightly on the actual written opinion. Thus, a majority opinion and concurring opinion were submitted.

Majority Opinion

It was the conclusion of the undersigned members of the appeals committee that the original NGFA arbitration committee correctly interpreted the relationships between the parties' contracts and the NGFA Trade Rules by finding that NGFA Barge Trade Rules 4, 10 and 11 were applicable. Likewise, the undersigned concluded that the original committee correctly applied trade custom and practice to the facts presented in these cases.

Therefore, the members of the Arbitration Appeals Committee agreed with the conclusion of the original committee to deny the claims asserted by J. Aron & Company against both Cargill Inc. and Cargo Carriers.

Submitted with the consent and approval of the following members of the Arbitration Appeals Committee, whose names are listed below:

Thomas J. Hammond, Acting Chairman
Senior Vice President
Columbia Grain Inc.
Portland, Ore.

Donald J. Cameron
Chairman
Cameron Brokerage Co.
Charlotte, N.C.

Steve Nail
President and Chief
Executive Officer
Farmers Grain Terminal Inc.
Greenville, Miss.

Concurring Opinion

While the undersigned members of the appeals committee concurred in affirming the result reached by the original arbitration committee, we believed several points needed to be made to avoid future disputes of a similar nature.

First, if a consignee or buyer of barge grain is uncertain of the specific perils covered by cargo insurance or a cargo insured bill of lading, the consignee or buyer should seek clarification immediately. Here, as in most barge grain shipment situations, title, as well as risk of loss and/or damage, passes to the buyer at the time and place of shipment. Consequently, the consignee or buyer clearly should determine the obligation(s) for reasonable care of the cargo being undertaken by the barge operator.

Second, this case pointed out one of the perils a consignee or buyer encounters when buying barge grain. The plaintiff in this case carried contingent insurance, but the insurer denied the claim on the premise that a cargo insured bill of lading was not primary insurance. This led to costly litigation and, ultimately, this arbitration case. All of this pointed out the need for the cargo owner to have a clear understanding of what the various underwriters or insurers indemnify where substantial losses may occur.

Third, the plaintiff argued that a federal appeals court case - Cook Industries, Inc. v. Barge UM-308, Upper Mississippi Towing Corp., 622 F2d 851 (5th Cir. 1980) - supported its claim for recovery. While the cargo owner did recover against the barge operator in

that case for losses occurring en route during river delays in 1973, the court opinion did not address the impact of the NGFA Trade Rules or trade custom applying to inland barge transportation. It also should be noted that the NGFA Barge Freight Trading Rules and NGFA Barge Trade Rule 4 [now embodied in Barge Trade Rule 11] did not exist at the time the losses in the Cook case occurred.

Submitted with the consent and approval of the following members of the Arbitration Appeals Committee, whose names are listed below:

James W. Keistler
Merchandising Manager
Twomey Co.
Smithshire, Ill.

Philip Hageman
Vice President
Parrish & Heimbecker Inc.
Brown City, Mich.