

Arbitration Case Numbers 1793, 1793B and 1793C

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Continental Grain Co., New York, N.Y.

Cross-Plaintiff: Continental Grain Co., New York, N.Y.

Cross-Defendant: Louis Dreyfus Corp., Wilton, Conn.

Cross-Plaintiff: Louis Dreyfus Corp., Wilton, Conn.

Cross-Defendant: Farmland Industries Inc., Kansas City, Mo.

Date: September 24, 1998

Statement of the Cases

This proceeding resulted from a series of trades made between the parties¹ beginning on July 31, 1995, when Farmland sold Louis Dreyfus 330,000 bushels of hard red winter wheat.

The string continued on Oct. 20, 1995, when Dreyfus sold Continental Grain 330,000 bushels of HRW wheat, and concluded on November 30, 1995, when Continental sold 330,000 bushels of HRW wheat to Cargill.

The parties in the string used the following delivery terms in their purchase and sale contract confirmations:

1. Farmland (July 31, 1995): "Delivery Basis: DELVD HOUSTON/GALVESTON/BEAUMONT"
2. Dreyfus (July 31, 1995 and Oct. 20, 1995): "Basis: Delivered Track Gulf"
3. Continental (October 20, 1995 and Nov. 30, 1995): "Basis: Delivered Track Gulf H/G/B"
4. Cargill (Nov. 30, 1995): "Basis: DELVDHT/GALV/BEAU"

The transactions between Farmland and Dreyfus on July 31, 1995, as well as between Dreyfus and Continental on Oct. 20, 1995, were brokered through Larson Brokerage Corp., Minneapolis, Minn. The Larson contract confirmations stated: "DELIVERY: Track For Export To Houston, Galveston or Beaumont; Single Destination For Unit Train/s."

In execution of its purchase contract from Continental on Nov. 30, 1995, Cargill requested that Continental issue transportation instructions to proceed to a destination in the Pacific Northwest. Continental transmitted the request up the string to its seller, Dreyfus, which in turn passed it on to Farmland. Later that day, Farmland responded through the string that the instructions to ship the available 100-car train on track at Kimball, Neb., were rejected. Farmland stated that the Kimball, Neb., train was not available to move to the Pacific Northwest. Further, Farmland stated that it was bound by contractual Gulf port delivery restrictions imposed by the Union Pacific Railroad. Farmland stated it attempted to divert the train to the Pacific Northwest through Union Pacific, but that its efforts were unsuccessful.

¹ All of the parties were and are NGFA Active members. The cases were consolidated into one proceeding for administrative and decisional purposes.

The Decision

NGFA Grain Trade Rule 10 addresses situations involving incomplete shipment or delivery. The rule specifically provides as follows:

“Seller’s Conveyance: When the Seller finds that he will not be able to complete a contract within the agreed limit, it shall be his duty at once to advise the Buyer by telephone or telegraph, whereupon it shall be the duty of the Buyer at once to elect either to: ... (c) after having given notice to the Seller to complete the contract, the Buyer will cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.”

The central issue to be decided in this arbitration was the interpretation of grain transportation terms set forth in the contracts between Farmland, Dreyfus, Continental and Cargill. Specifically, did the transportation terms refer to “price basing points?” Or did they limit actual delivery to a specific destination? None of the contracts in the string (nor the broker’s confirmations) specified a guaranteed unload point.

There should be no misunderstanding of the meaning of the delivery terms used by the parties. There is a long-established custom in the trade as to their use. Freight basis terms are pricing mechanisms that provide trading parties with the ability to arbitrage positions and preserve the fluidity of the market. If Farmland had intended to restrict delivery of the train to a specific group of destinations and eliminate others from consideration, it should have requested that “guaranteed delivery” be inserted in the contract before receipt of shipping instructions.

The arbitrators concluded that Continental Grain owed Cargill the sum of \$63,525 on the claims set forth in the original arbitration complaint in Arbitration Case Number 1793. This was the difference between the

original Cargill purchase from Continental at \$5.64 per bushel, and the cancellation at fair market value of +90 Kansas City March futures for Portland, minus 7-cents-per-bushel freight spread to HT/GALV/BEAU, or +83 cents. The futures price was finally fixed at \$5.0025 after numerous attempts to exchange futures with Continental. This left a \$5.8325 cancellation, or 19.25 cents per bushel multiplied by 330,000 bushels, resulting in a balance due of \$63,525.

Continental and Dreyfus stated that they were middle parties in a string of back-to-back contracts and respectfully requested that the arbitrators grant any cross-claim amounts or deny the claim to the same extent as granted in the Cargill claim against Continental. Based upon the information submitted by the parties, the arbitrators found in favor of Continental in Arbitration Case Number 1793B, with a like amount of \$63,525 owed by Dreyfus. In Arbitration Case Number 1793C, the arbitrators found in favor of Dreyfus on its claim and awarded Dreyfus a judgment against Farmland in the amount of \$63,525.

Compound interest on the awards shall accrue at the rate of 8.25 percent per annum from Nov. 21, 1996² until paid.

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

Ian Muir, *Chairman*
Bunge Corp.
St. Louis, Mo.

Greig Dougherty
R.F. Cunningham & Co. Inc.
Auburn, N.Y.

Gary McLain
Koch Agriculture
Wichita, Kan.

² The date of the filing of Cargill’s original complaint initiating this proceeding.