



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

November 8, 1977

Arbitration Case Number 1523

PLAINTIFF: Continental Grain Co., New York, New York
DEFENDANT: T & R Enterprises, Inc., Boaz, Alabama

An oral hearing was conducted to arbitrate this case, which involved the validity of cancellation of sale contracts, and any damages effected thereby.

Both parties agreed to have entered into contracts for sale under the terms and conditions as set forth in Plaintiff's Sales Confirmations #39330 dated November 6, 1974; #39333 dated November 12, 1974; #39342 dated December 16, 1974 and #39343 dated December 16, 1974.

Evidence submitted showed that 21 truck shipments amounting to 22,293 Bu. were applied on Contract #39330 between January 7, 1975 and February 20, 1975. 8 of the 21 shipments were accepted on contract, with discount allowed. The Defendant notified the Plaintiff by letters dated January 15, 1975, January 24, 1975 and January 31, 1975, of dissatisfaction of quality being delivered on contract, and Defendant delayed shipments for the balance of the week of January 24, 1975 and the week of January 31, 1975. Defendant's letter dated January 15, 1975 demanded an assurance that the corn to be delivered pursuant to the contracts, should conform to the respective contracts. Evidence submitted showed that the Defendant did pick up and accept on contract, numerous loads following the letters of January 15, January 24 and January 31, 1975.

The Defendants, through their attorney, sent a letter of cancellation of contracts, to the Plaintiff, dated February 20, 1975. The notice of cancellations via certified mail was submitted for the following stated reasons:

1. The failure of Continental Grain Co. to give adequate assurance of performance as requested by T & R's letter dated January 15, 1975.
2. The continued failure of Continental Grain Co. to deliver corn conforming to the contracts.

Plaintiff's letter dated February 27, 1975 addressed to the Defendant advised the Continental Grain Co. did not agree with T & R's letters of January 15; January 24 and January 31, 1975 and further, they did not agree with the Defendant's attorney's letter dated February 20, 1975. Continental advised that they were ready, willing and able to fulfill the balance of the contracts. Further, Continental advised T & R that if they did not receive before the close of business on March 3, 1975, notification that the Defendant had retracted their termination of the contracts, Continental was to interpret the attorney's letter of February 20, 1975 as Defendant's repudiation of the contracts, and that Continental would hold T & R liable for resulting damages.

The Arbitration Committee unanimously found in favor of the Plaintiff (Continental Grain Co.) and further agreed that the Defendant (T & R Enterprises, Inc.) was in violation of the National Grain and Feed Association's Grain Trade Rule No. 43, and that the Plaintiff (Continental Grain Co.) was duesatisfaction under the National Grain & Feed Association's

Grain Trade Rule No. 16(c)(1). The Committee was of the opinion that the Defendant (T & R Enterprises, Inc.) defaulted on the contracts, in accordance with the letter of cancellation dated February 20, 1975, from Robert W. Hanson, Attorney for the Defendant. Further, inasmuch as the Defendant's letter of February 20, 1975 was apparently posted the afternoon of Thursday, February 20, 1975, the Committee assumed that the Plaintiff (Continental Grain Co.) did not receive such notice of cancellation until sometime during the morning of Monday, February 24, 1975. Therefore, it was the Committee's opinion that the date and time for establishment of the fair market value of cancellation, should be based on the settlement prices on the Chicago Board of Trade as set forth in the attached "Schedule of Damages."

Accordingly, the Committee ordered the Defendant (T & R Enterprises, Inc.) to pay to the Plaintiff (Continental Grain Co.) the amount of \$114,297.20 covering the fair market value of the unshipped contracts, plus interest at the rate of 7% per annum from the date of February 24, 1975, until final settlement.

Schedule of Damages**

<u>Contract</u>	<u>Futures* Price Date of Contract</u>	<u>Futures* Price Date of Cancellation</u>	<u>Monetary Loss</u>	<u>Unshipped Bushels</u>	<u>Amount</u>
39330	11-6-74 CH- \$3.89	2-24-75 CH- \$2.78 $\frac{1}{4}$	\$1.10 $\frac{3}{4}$	17,694.99	\$19,597.20
39333	11-12-74 CH- \$3.80 $\frac{1}{2}$	2-24-75 CH- \$2.78 $\frac{1}{4}$	\$1.02 $\frac{1}{4}$	20,000.00	20,450.00
39342	12-16-74 CK- \$3.59 $\frac{1}{4}$	2-24-75 CK- \$2.82 $\frac{3}{4}$	\$.76 $\frac{1}{2}$	40,000.00	30,600.00 (
39343	12-16-74 CN- \$3.55 $\frac{1}{2}$	2-24-75 CN- \$2.82 $\frac{3}{4}$	\$.72 $\frac{3}{4}$	60,000.00	<u>43,650.00</u> \$114,297.20

*Settlement prices on the close of the corn futures market, Chicago Board of Trade

**Not including interest

ARBITRATION COMMITTEE of the National Grain and Feed Association

/s/ W.C. Theis, Chairman
Simonds-Shields-Theis Grain Co.
Kansas City, Mo.

/s/ R.T. Creekmore
Indiana Grain-Queen City
Cincinnati, Ohio

/s/ Lowell E. DeLong
Agway, Inc.
Syracuse, N.Y.

APPEAL of Arbitration Case No. 1523

T & R Enterprises, Inc. (Defendant) filed a notice of appeal with the Association, however, the Association was compelled to dismiss the appeal because T & R Enterprises, Inc., failed to comply with the Association's Arbitration Rules.