

Arbitration Case Number 1525

Plaintiff: Bunge Corporation, New York, New York

Defendant: Donnie Ray Hoffard, Pittsburg, Illinois

May 4, 1976

Statement of the Case

The dispute involved the Defendant, Donnie Ray Hoffard, who entered into a contract whereby Hoffard sold the Plaintiff, Bunge Corporation, 1,300 bushels of No. 1 Yellow Soybeans at \$3.17 per bushel, delivery to be made at Bunge's place of business at Harrisburg, Illinois, no later than December 31, 1972. The contract was entered into August 24, 1972.

Subsequently, Bunge and Hoffard on September 18, 1972, entered into a similar contract in which Hoffard sold Bunge Corporation 500 bushels of No. 1 Yellow Soybeans at a price of \$3.24 per bushel, delivery to be made at Harrisburg, Illinois, no later than December 31, 1972.

On September 20, 1972, Bunge and Hoffard entered into still another contract whereby Hoffard sold Bunge 500 bushels of No. 1 Yellow Soybeans at a price of \$3.20 per bushel, delivery on the same terms as the two previous contracts.

It was noted by the arbitration committee that each of the contracts between Bunge and Hoffard provided that the contract or contracts could be extended by Bunge if not filled within the time for delivery. It was further noted that on October 24, 1972, Hoffard delivered 174.45 bushels of soybeans to Bunge under the first contract, No. 1172.

The Decision

The evidence indicated clearly that the seller, Donnie Ray Hoffard, failed to perform in accordance with the balance of the contracts, and that the Buyer, Bunge Corporation, is entitled to damages. It was noted by the committee that the original contracts were made in good faith on both the part of Bunge and Hoffard.

Prior to the termination of the contracts, as of December 31, 1972, Bunge elected to grant 60-day extensions, which Mr. Hoffard did not repudiate. It was further noted that communication between the parties in January and February resulted in the understanding that the contracts would be filled.

It was apparent that both parties were aware of the unharvested crop still standing in the fields. However, if weather had permitted during March or until April 12th, Hoffard would have delivered, and it appears Bunge Corporation would have accepted and applied such deliveries on the contracts.

Bunge Corporation did not extend the contracts in February as it had in December. But neither did it cancel the contracts until April 12, 1973, at which time Hoffard was advised cancellation was effective as of March 31, 1973. Two months later, Bunge advised Hoffard that the cancellation date should have been February 28, 1973.

It is the opinion of the arbitration committee that because the possibility did exist wherein the contracts were effective during March that damages of \$4,902.53 be awarded to Bunge Corporation based on the market price at Harrisburg, Illinois, as of March 31, 1973.

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

R. W. Bolton, Chairman

Atwood-Larson Company, Minneapolis, Minnesota

Clayton W. Johnson

Midstates Terminals Inc., Toledo, Ohio

Phillip Kenney

Farmers Grain Co-op of Eureka, Eureka, Illinois