



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

June 21, 1977

ARBITRATION CASE NUMBER 1531

PLAINTIFF: LINCOLN GRAIN, INC.

DEFENDANT: ARCHER DANIELS MIDLAND CO.

The Arbitration Committee reviewed all submitted evidence in the case.

Plaintiff asked that the respondent pay balance of monies due plus interest on an identity-preserved storage contract entered into and agreed to by both parties dated October 14, 1975.

The respondent in answer requested that the plaintiff be found negligent in the handling of respondent's stored soybeans and also requested financial remuneration for losses incurred on the soybeans that respondent claimed were not identity-preserved.

FACTS:

Contract existed for storage and identity-preserved handling.

No evidence or indications that plaintiff misrepresented type of storage facility involved.

Bin numbers were itemized and plaintiff stated bin temperature readings which were forwarded weekly. (Not disputed by respondent)

There was no disagreement evident on type of facility used for storage.

Plaintiff stated respondent was given opportunity to inspect facility before and during time of contract and also opportunity to inspect stocks during storage period. (Not disputed by respondent)

There was no evidence that respondent had a representative look at the facility or inspect respondent's storage soybeans at any time prior to receipt of soybeans or during storage or load out period.

There was no evidence of any amendment or written objection referencing delay of loading out nor any evidence of agreement on any contract modification because of delays or any other area of contention.

Respondent addressed other problems arising during execution of contract only after the fact.

Referencing respondent's contention that a scale problem existed at Lincoln Grain, evidence indicated no point of contention on weight losses. Documents showed that plaintiff accepted outturn weights on rail cars and some trucks and, in any case, the contract stipulated a shrink factor.

Foreign material and other grains were present in inbound soybeans as well as outbound and evidence did not show clearly degree of differences or a quantified loss thereupon.

CONCLUSION:

The Committee found unanimously for plaintiff.

No evidence was submitted showing any amendment to the contract or any written objections on delay in loading or written attempts to reach agreement on limiting period of storage charges under the contract prior to completion of loading out.

It could not be concluded that the plaintiff performed less than reasonable warehousing -- given the type of facility involved -- The contractual terms stating that plaintiff "... will not be responsible for differences in grade between soybeans unloaded and those loaded out..." -- and the respondent's failure to inspect the plant and his stored grain at any time and especially after alleged differences started to fester.

Withholding of storage payment based on a belief that the beans were not stored identity-preserved was not a legitimate off-set to the storage claim.

The Committee herein ruled that the respondent pay plaintiff all storage due (i.e. Three unpaid storage invoices amounting to \$12,255.31) plus interest at 6 3/4 % per annum for the period beginning with unpaid invoices through final settlement date.

ARBITRATION COMMITTEE:

March 10, 1977

/s/ Edmund P. Karam, Chairman
Continental Grain Company
Chicago, Illinois

/s/ Silas Matthies
General Mills, Inc.
Minneapolis, Minnesota

/s/ Gerald Frazier
Union Equity Co-op Exchange
Enid, Oklahoma