NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

January 10, 1979

ARBITRATION CASE NUMBER 1547

PLAINTIFF: Louis Dreyfus Corporation, Shawnee Mission, Kansas

DEFENDANT: Early & Daniel Co., Inc., Cincinnati, Ohio

FACTS

Early & Daniel sold Louis Dreyfus Corporation eight 3-car units of corn on 11/29/77, to be shipped at a rate of two per week beginning the week of December 5. The sale was made subject to NGFA rules, except for the stipulation that the "unloading elevator to be designated by buyer at time of shipment."

On Friday, December 30, at approximately 11:30 a.m., E & D notified Dreyfus by telephone that they would not be able to ship the two units owed for that week. Dreyfus says that they then informed their buyer of that fact, who said he needed the corn shipped that week. Dreyfus telexed E & D at 12:19 CST that their buyer was buying in the two units at the market for shipment that day, then telexed again at 1:25 informing E & D that the two units had been bought in for E & D's account at 11 over the March.

There is an apparent dispute between the two parties concerning whether there was a phone conversation between them that Friday, wherein E & D, upon receipt of the first telex, called Dreyfus' attention to the 24-hour notice requirement under Grain Trade Rule 11. Dreyfus says the phone call was made on Tuesday, January 3, not December 30. E & D did not receive (read) the second telex until Tuesday, since their office was closed for the holiday before it was received.

On Tuesday, January 3, the two parties do agree that E & D refused the "buy-in" of Friday, saying that they would have the two units loaded prior to the 24-hour deadline (wherein Saturdays, Sundays, and holidays are not to count), that Dreyfus refused to accept the application of the units, that E & D referenced Rule 11 and applied two 3-car units on the contract which were once again refused, and that E & D unilaterally canceled the contract on the grounds that the Dreyfus refusal relieved them of liability for the balance of their contractual agreement.

PETITION

The plaintiff seeks no specific damages, but rather a resolution to the conflict. It is their contention that they kept E & D fully informed of the action contemplated and then taken in response to the defendant's failure to ship the units during the week of December 26, that E & D did not challenge or disagree with the proposed/effected buy-in procedure until after the fact and that "the realistic demands and customary understanding of the Evansville corn trade" dictate that the LDC buy-in contract in question be upheld and priced at the current market, and that the cancellation made unilaterally by E & D be declared null and void.

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MAJORITY DECISION

While the committee sympathizes with the plaintiff in his position, it does not find merit in his petition for the simple reason that the defendant did in fact perform per the letter of the applicable Trade Rule, #11, whose applicable provisions are repeated here:

> "When the seller finds that he will not be able to complete a contract for delivery 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 (a) agree with the seller upon an extension of the contract; (b) after having given 24-hours notice, excluding Saturdays, Sundays, and legal holidays, to the seller to complete the contract, the buyer will buy in for the account of the seller, the defaulted portion of the contract within the next business day; or (c) after having given 24-hours notice, excluding Saturdays, Sundays, and legal holidays, 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."

In the opinion of the committee, it is irrelevant whether E & D seemed to accept passively the notice of a potential buy-in of the contract balance by the plaintiff. It is also irrelevant whether the disputed phone call took place on December 30 or January 3. What is relevant, and the decisive issue in this case, is that both parties agreed as to the timing of the 24-hour notice and that the defendant did in fact apply two 3-car units before that 24-hour period expired.

There is a question of fairness and intent which is raised in this case, when the rules allow a seller relief from shipping grain, not only for the captioned 24 hours, but for 72 hours and even, as in this case, as long as 96 hours, which the parties may wish to present to the relevant NGFA committee. We can do no more than make reference to it, however, in this deliberation.

/s/ L. A. Remele
Peavey Company, Minneapolis, MN

/s/ J. A. Howard, Chairman
Cargill, Inc., Minneapolis, MN

MINORITY OPINION

I recognize that trading practices involving highly tailored and tightly structured multi-rail units that combine grain, conveyance and specific rail carriers have developed in numerous areas. Such units frequently assume a greater than normal marketplace value because of closely defined shipment schedules and the dependability of such scheduling. I believe that both the plaintiff and the defendant in this case, via the contract as executed, defined for themselves obligations beyond those contemplated by our normal grain trade rules. By custom, if not by expression, buying in, swapping out or numerous other mechanisms have clearly evolved to sustain the validity of such contracts. They are often used.

Believing that these precedents should be weighed along side existing rule language, I am of the opinion that the defendant chose not to pursue commonly accepted alternatives to resolve the obligation previously defined and that the plaintiff's actions were a response to and expressed intention by the defendant that delivery would not be forthcoming as contracted. The plaintiff should not be the sole bearer of consequences resulting from the defendant's action.

In this decision, I am cognizant of Rule 11 and its long standing place and value in the rules. Basis fairness and intent, to apply it to the letter with the resulting 57% extension of the shipment period in this case appears less than commercially acceptable. Both plaintiff and defendant would do well to pursue with relevant NGFA committees the future application of Rule 11 to this specific type of transaction and its compatability with practices that widely exist.

/s/ Robert S. Cartmill, Lincoln Grain, Inc., Lincoln, Nebraska