



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

February 5, 1980

ARBITRATION CASE NUMBER 1550

Plaintiff: Central Soya Company, Inc., Fort Wayne, Indiana

Defendant: Allied Mills, Inc., Chicago, Illinois

FACTS

Central Soya sold Pillsbury 200,000 bushels of 2 yellow corn CIF New Orleans for shipment January 1-10, 1978, in May of 1977. In part fulfillment of this contract, Central Soya applied Barge AD 310 B ex Spring Valley, Illinois on January 6, 1978 to Pillsbury, with an applied origin weight of 54,464 bushels, based on draft readings of 8 feet 7 inches. This barge was applied by Pillsbury to its buyer, passed through a "string," and ultimately ended in the possession of the Defendant, Allied Mills.

The barge remained in an afloat position at various points on the Illinois River until March 23, 1978, at which time it commenced its movement to Guntersville, Alabama, arriving there on April 6, 1978. Eventually it was unloaded at the Defendant's facility on April 14, with an official unload weight as issued by the Alabama Grain Inspection and Weighing Department, of 39,961.49/56 bushels.

Defendant notified its seller, Continental Grain, of the unload weight on April 7, 1978, but at no time notified Central Soya. Central Soya did not receive notification of the destination weight until final settlement was obtained from their original buyer, the Pillsbury Company, on May 26, 1978.

Plaintiff claimed an award of \$31,761.57, plus appropriate interest, as compensation for the shrinkage between origin weights and destination weights, because of the failure by the Defendant to comply with NGFA Barge Trade Rule 2(f). The claim represented the contract price of \$2.19 per bushel times the shortage of 14,503 bushels on the subject barge. The market the day after unload was worth about \$2.84 per bushel.

Defendant admitted to the violation of Rule 2(f) but claimed that the actual loss to the Plaintiff was only \$652.64, plus appropriate interest.

MAJORITY DECISION

Although the contract was written with official destination weights to govern, it was felt that the violation of Rule 2(f) made it impossible for the Plaintiff to investigate the large discrepancy in weights between origin and destination.

Other factors given serious consideration in deciding the case included the following:

1. The official weight certificate at destination was not signed by the licensed weigher. This could have been a mere oversight, but nonetheless the certificate loses some credibility.
2. The official weight certificate at destination did not include the statement that "all grain in the barge was unloaded and that no grain was left in the barge." This was in violation of Rule 2(d).
3. Although Allied Mills provided an affidavit from the traffic manager for Continental Grain at Guntersville that the barge was completely unloaded, there was no concrete evidence supplied from the licensed weighmaster that the barge was completely unloaded. Additionally, the Defendant failed to supply the unload weight tape as evidence, saying it was in the hands of the Alabama Inspection Service, and was 12 feet in length. In light of the deficiencies of the weight certificate as per Items 1 and 2, this tape should have been produced as evidence.
4. Allied Mills purchase contract from Continental Grain was written as "official origin weights" and later was orally changed to read "destination weights." This might be interpreted that Allied had some problem with their destination weights at one point in time.
5. If something happened to the corn in the barge between load and unload, such as pilferage, this would not be for the account of Central Soya, per Barge Trade Rule 10.

In conclusion, we find the Defendant, Allied Mills, in violation of Barge Trade Rule 2(f) and, therefore, award the Plaintiff, Central Soya, the sum of \$31,767.57, plus appropriate interest.

/s/ R. L. Mittelbush, Chairman
Peavey Company
Minneapolis, Minnesota

/s/ J. L. McClenathan, Jr.
Illinois Grain Corporation
Chicago, Illinois

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Plaintiff: Central Soya Company, Inc., Fort Wayne, Indiana

Defendant: Allied Mills, Inc., Chicago, Illinois

MINORITY OPINION

All of the contracts involved in this dispute called for destination official weights to govern. Barge Trade Rules 2(a) and 2(b) clearly defined what should constitute an official weight. It was then the buyer's responsibility to obtain a certificate which conformed to these rules.

The Defendant's failure to comply with Barge Trade Rule 2(f), while regrettable, had no bearing on the validity of the official destination weight. Plaintiff, who bears the burden of proof, presented no evidence that the weight certificate was invalid nor does he refute evidence offered by the Defendant that all grain was unloaded from the barge. Thus, the weight as certified must stand.

It would seem that the intent of Barge Trade Rule 2(f) is to insure that a shipper has adequate notice of weight irregularities or cargo damage in order to take the necessary measures to protect whatever fiduciary interest he may have. Generally, the question arises when damaged grain is found in a barge at time of unload. In the present case, where barge is completely unloaded, and officially weighted, any notification by the buyer may come too late to allow the shipper to determine the cause of the divergence in weights. Thus, the Defendant's failure to comply with this rule does not seem to be the proximate cause of any losses which the Plaintiff has claimed.

Plaintiff's contention that he was deprived of the opportunity to investigate the discrepancy in the weights is somewhat strained in light of the fact that the barge itself belongs to the Plaintiff.

In accordance with Defendant's pleadings, therefore, the Plaintiff should receive an award of \$652.64 plus interest at 1% above the prime rate from 26 May 1978 to the date of this decision.

/s/ J. Stephen Lucas
Louis Dreyfus Corporation
Stamford, Connecticut

DECISION OF ARBITRATION APPEALS COMMITTEE

ARBITRATION CASE NUMBER 1550

Appellant: Allied Mills, Inc., Chicago, Illinois

Appellee: Central Soya Company, Inc., Fort Wayne, Indiana

The Arbitration Appeals Committee has individually and collectively reviewed all evidence submitted in Arbitration Case Number 1550. The Appeals Committee does not concur with either the majority report or the minority report of the original Arbitration Committee.

It does not concur with the majority report because it finds that the official outturn weight certificate was actually official in accordance with the Trade Rules, and therefore governs the contract. It further finds that the majority report did not take into consideration the Appellee's risk when grain is sold basis official outturn weights.

It does not concur with the minority report because it does not give consideration to losses that could have occurred because of the Appellant's non-compliance with Barge Trade Rules 2(d) and 2(f).

Therefore the Appeals Committee found in favor of the Appellee as follows:

Hedge loss of \$652.64 plus interest at 1% over the average prime rate of 11.40% from May 26, 1978 to the date of the decision. We further, with due regard to justice and equity, award the Appellee the sum of \$8,260.

/s/ James Donnelly, Chairman
R. F. Cunningham & Co., Inc.
Melville, New York

/s/ Charles H. Holmquist
Holmquist Elevator Co.
Omaha, Nebraska

/s/ W. C. Theis
Simonds-Shields-Theis Grain
Kansas City, Missouri

/s/ Bruce Cottler
Bartlett and Co.
Kansas City, Missouri

/s/ Royce S. Ramsland
Quaker Oats Co.
Chicago, Illinois