



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

April 22, 1980

ARBITRATION CASE NUMBER 1554

Plaintiff: Continental Grain Company
Defendant: Pingree Grain Company

THE TEXT OF THE DECISION

It was Continental who made the decision to cancel the incomplete deliveries of 1,013,147 pounds of sunflower seeds against 4 contracts. There were 5 contracts involved in the business between Continental and Pingree. The total contracted quantity of the 5 contracts was 2,830,000 pounds. Against this total Pingree actually delivered 1,716,853 pounds. Sufficient seed had been delivered against contract #51083 to complete this contract. The application of deliveries against contract #51083 was out of turn, at least to the extent that the first priority to apply deliveries should have been against contract #52173, against which no applications whatsoever were made notwithstanding that the delivery dates were October 1-30, 1978.

Continental assumed that their letter of December 21, 1978, to Pingree was a letter of cancellation. Actually, it was not. It only directed Pingree's attention to the four alternatives suggested in the letter to finalize the incomplete deliveries. The same letter avoided any reference to Pingree's letter of December 19, 1978. This disregard for Pingree's notice was in the same pattern regarding Pingree's letter of October 19, 1979, which also was ignored by Continental.

The text of Pingree's letter is repeated here, to bring its purpose into clear focus:

"Due to the fact that our trucks must wait from 15 to 20 hours at your elevator; also the fact that the lease car we had here, you would not permit us to load with contracted sunflowers, but would buy open ones to load it, makes me feel we will be unable to fill our contracts with you. Hopefully, something can be done about the unloading time, as we can't find truckers who want to go to your elevator."

Clearly, this letter was not necessarily a complaint. It has to be accepted as a signal, or at least a warning, to Continental, that a default was possible. This would be particularly true of contract #52173 with delivery dates of October 1-30, 1978.

THE AWARD

The Committee of Arbitration, based on its study and examination of the testimony and competent evidence furnished to it: and pursuant to Grain Rule 11 of the National Grain and Feed Dealers Association, which was adopted and made applicable in the settlement of this controversy; do hereby award the Continental Grain Company the sum of Twelve Thousand Eight hundred Sixteen dollars and Twenty Eight cents (\$12,816.28) in full settlement of their claim against the Pingree Grain Company. This amount due and payable by Pingree Grain Company forthwith.

The Committee determined that the breach of the respective contracts was due to Pingree's failure to exercise the alternatives that were available to Pingree in the transportation and delivery of the sunflower seeds, within the delivery dates stipulated in the contracts. The Committee also determined that it was the sole right of Continental to employ and direct the use of the rail car on Pingree's siding. Pingree's argument on this point was actually irrelevant.

Among the several determinations made with respect to Continental's testimony and evidence were Continental's failure to understand that: A) they did not have the right to assume that the contracts involved in the controversy could be extended by the methods they employed; B) contractual obligations may not be bunched arbitrarily. The terms and conditions of each contract stand separate with respect to contractual liability.

THE CLAIM

On November 29, 1979, Continental invoiced Pingree in the amount of \$19,160.32. This invoice was rendered on the basis of a decision made by Continental on December 21, 1978, to cancel the uncompleted deliveries of sunflower seeds against contracts, as below.

	<u>ARRIVAL DATES</u>		
	<u>OCTOBER 1-30</u>	<u>OCT. 15/NOV. 15</u>	<u>NOVEMBER 1-30</u>
Exhibit C	500,000		
Exhibit A		630,000	
Exhibit B		1,100,000	
Exhibit E		100,000	
Exhibit D			500,000
TOTAL	<u>500,000</u>	<u>1,830,000</u>	<u>500,000</u>
Delivered	<u>349,614</u>	<u>1,148,936</u>	<u>318,303</u>
Not Delivered	150,386	681,064	181,697

The amount of Continental's invoice for \$19,160.32 was arrived at by using the fair market value, as reflected by the closing price of sunflower seed, delivered Duluth/Superior on December 22, 1978. This was \$11.90 cwt. The prices specified in the contracts thusly were matched against the price of \$11.90 cwt to arrive at the market price differences claimed.

The testimony given by Continental simply stated that they never collected any portion of the money now claimed. No explanation was given for the 11 month delay in invoicing.

Four of Pingree's truckers furnished sworn statements attesting to the unreasonable unloading delays at Continental's Superior, Wisconsin grain facilities. Continental took the position that they never refused to unload any deliveries made by Pingree and delays in unloading at all elevators in Duluth/Superior were normal for the harvest rush period of October-November. The thrust of Pingree's argument was directed to the point that nonperformance, under the conditions to unload, might be excused.

The letter of October 19, 1978, and that of December 19, 1978, written by Pingree were both vague with respect to the specific contracts to which each was directed. The same thing can be said with respect to Continental's letter of December 21, 1978. All these letters referred to unspecified contracts. This common problem had its roots in the way delivery applications were applied. Both parties condoned and practiced a procedure of posting/applying deliveries against contracts that violated standard methods customarily used by the trade. Under the circumstances, the idea of rearranging delivery application to suit trade standards could not be accomplished. Besides, neither party could furnish the complete evidence necessary to do this. Much of it was either mislaid or lost.

Naturally, a true disregard for the delivery period stipulated in the various contracts was the result. In fact, Continental did consider the contracts as being BUNCHED. It was basically on this premise that Continental comported themselves by stating that the four contracts showing incomplete deliveries were extended based on Pingree's delivery of 48,936 pounds made against contract on December 13, 1978.

Submitted with the consent and approval of the Committee, whose names appear below:

- /s/ Robert Bolton, Chairman, Atwood-Larson Co., Minneapolis, Minnesota
- /s/ Duane Stich, Bunge Corporation, Minneapolis, Minnesota
- /s/ Richard Potter, Morgan Grain & Feed Co., Morgan, Minnesota