



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

December 16, 1980

ARBITRATION CASE NUMBER 1556

PLAINTIFF: Fred Webb, Inc.

DEFENDANT AND CROSS-PLAINTIFF: J.F. Wyman, Inc.

CROSS-DEFENDANT: Central States Grain Co., Inc.

CLAIM: \$1,040.00 plus interest

Statement of Case

The dispute involved the responsibility for demurrage incurred at origin on a four-car (4) multi of yellow corn billed February 15, 1979. The shipper applied the unit to his buyer on February 7, 1979, in the first step of what turned out to be a "string trade" involving ten transactions and eight parties.

As each party in the string applied the unit to his buyer, no problems occurred until February 9, 1979, when Fred Webb, Inc. (who now appeared for the third time in the string) applied the unit on a spot sale to J.F. Wyman, Inc., and Wyman subsequently applied it to Central States Grain Co., Inc. on a previous sale for February shipment. At that time, Central States "chose not to give billing instructions until a later date." Billing instructions were issued on February 14, passed back through the string, and the unit was billed by the shipper to the final destination on February 15.

A demurrage bill of \$1,040.00 was incurred as a result of the delay in billing the unit. Webb, who was the shipper's buyer, paid the railroad \$1,040.00 on February 28, 1979. Payment of the demurrage bill (or allowance for it on grain settlements) was passed through the chain until it came back to Webb the third time, and an attempt was made to collect from Wyman, Webb's buyer, at this point in the chain. Wyman chose not to pay the bill and stated "our firm is in no way responsible for any demurrage incurred" and "it appears to us that all demurrage involved in this case is strictly a matter between Central States and Webb."

Webb, as Plaintiff, asked for payment of \$1,040.00 plus interest from Wyman, Defendant. Wyman, as Cross-Plaintiff, asked for reimbursement from Central States, Cross-Defendant, if he was required to pay Webb.

Decision

The Committee found in favor of the Plaintiff, based on the following:

1. Wyman was in violation of Rule 7 (a) by buying a spot unit from Webb on February 9, 1979, and not giving billing instructions until February 15, 1979.
2. Wyman's argument, that a broker acting as their agent on February 9, 1979, purchased the unit of corn and applied it simultaneously to Central States, thus relieving them of any responsibility for the passing of billing instructions back to their seller, was rejected.

Furthermore, the Committee found in favor of the Cross-Plaintiff, as follows:

1. Central States was in violation of Rule 7 (b) by purchasing a unit of corn on October 9, 1978, from Wyman for February 1979 shipment, receiving application of the unit from Wyman on February 9, 1979, and not giving billing instructions until February 14, 1979.

2. The fact that Wyman did not elect one of the options listed in Rule 7 (b) when billing was not given on February 9 did not seem to be a problem as far as Central States was concerned, since "Central States Grain Co., Inc. at all times agreed to owing demurrage charges."

3. Central States' statement that "we can provide proof of payment as given to Fred Webb, Inc." would appear to be contested by Wyman's statement that "Central States did not pay the \$1,040.00 demurrage billed Webb" and that "Central States owes us and we owe Fred Webb \$1,162.71 (\$1,040.00 plus \$122.71, a difference on discounts) which we will forward to them when received from Central States." The obligation will be on Central States to show proof of their payment to the satisfaction of Wyman, and subsequently Webb.

Award

J.F. Wyman, Inc., Defendant, owes Fred Webb, Inc., Plaintiff, \$1,040.00 plus interest.

Central States Grain, Inc., Cross-Defendant, owes J.F. Wyman, Inc., Cross-Plaintiff, \$1,040.00 plus interest.

The Committee awarded interest of \$130.00 based on 12% annual interest from May 15, 1979 (the date Webb invoiced Wyman) to May 30, 1980.

/s/ David Porter, Chairman
Tabor Grain Co.
Decatur, IL

/s/ Phillip Kenney
Farmers Grain Co-op
of Eureka, IL

/s/ Thomas Toohey
Agricol Georgia, Inc.
Atlanta, GA

DECISION OF ARBITRATION APPEALS COMMITTEE - ARBITRATION CASE NUMBER 1556

APPELLANT: Central States Grain Co.

APPELLEE: Fred Webb, Inc.

The Arbitration Appeals Committee, individually and collectively reviewed all evidence in Arbitration Case Number 1556. It was the unanimous opinion of the Committee to find in favor of the Appellant (Central States), and against the Appellee (Fred Webb and J.F. Wyman, Inc.).

Although the evidence on both sides left much to be desired, the Committee found that the available evidence showed that the Appellant had in fact paid the demurrage and there was no evidence that he had passed this demurrage on to anyone else in the string of trades.

It was the opinion of the Committee that Fred Webb, Inc. for reasons unknown (since Coward had no contract directly with him), allowed the demurrage to Coward, but there was no evidence that Coward was charged with the demurrage. It is the Committee's opinion that if Webb had a claim on demurrage, it should be against Coward and not the Appellant.

The Committee found in favor of the Appellant, Central States Grain Co., Inc. and dismissed the case against the Appellant.

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

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

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

/s/ Clayton W. Johnson
Mid States Terminals
Toledo, OH

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

ARBITRATION CASE NO. 1556

Fred Webb, Inc. v. J.F. Wyman, Inc. v. Central States Grain Co.

The Arbitration Appeals Committee reported a correction in their decision on the appeal of Arbitration Case No. 1556 as previously reported to National members on December 16, 1980.

The committee advises that the second line of the third paragraph should be corrected to read as follows to insert underscored word.

(Coward had no purchase contract directly with him.)...