



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

July 23, 1981

ARBITRATION CASE NO. 1561

Plaintiff: Continental Grain Company

Defendant: Cargill, Inc.

Cross-Plaintiff: Cargill, Inc.

Cross-Defendant: The Pillsbury Company

The case covers a dispute over the final settlement weight of a Union Pacific 50-car corn train (identified as UP72884 lead car) shipped December 14, 1979, from St. Paul, Nebraska, to Tagus Siding, Tulare, California. The Cross-Defendant eventually (January 29, 1980) settled the car with the Cross-Plaintiff based on the only available truck weights at various destinations in California after finding that "official" weights were not available. The Plaintiff invoiced the Defendant May 2, 1980, based on "affidavit" weights at loading and the Defendant settled with the Plaintiff May 28, 1980, using the truck weights provided by the Cross-Defendant.

Shipper's Affidavit Weights: 50 cars @ 194,000 = 9,700,000 lbs.
California Truck Weights: (numerous trucks = 9,494,900 lbs.
and destinations)

Weight Difference 205,100 lbs.

Claim: \$9,789.24 plus interest from May 28, 1980

Cross-Claim: "Additional Weight" equal to any weight quantity awarded to Continental. No dollar values stipulated.

Arbitration Committee Findings

1. All parties failed to clarify or question initial contracting differences. This made it impossible to fix specific fault for not obtaining contracted weights.

Plaintiff - Contract of Sale: "first official" weights

Defendant - Contract of Purchase: "official" weights

Instructed: "WISD - destination weights"

Cross-Plaintiff - Contract of Sale: "official" weights

Cross-Defendant - Contract of Purchase: "first official" weights

No applicable "official" or "first official" weights were obtained.

2. Even though verbal discussions between clerical personnel evidently occurred concerning the possible use of "truck" weights there was no confirmation of agreement.

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The Trade Rules do not speak specifically to the subject but it is pointed out that Trade Rule 21(b) states "Grain sold basis official destination weights may not be diverted by Buyer to a destination where official weights are not available except with the permission of the Seller. Such diversion agreement must be confirmed in writing, and shall describe what kind of alternative weights were agreed upon for final settlement."

3. Truck weights provided were from various haulers to a multitude of destinations, some of which were at a substantial distance from the unloading point. Also initial truck tickets submitted did not equal quantities paid which points to a definite problem in truck load verification versus a particular rail shipment.
4. Although not speaking specifically to this situation, the Trade Rules do imply that in the absence of "official" weights as agreed or a written agreement to "other" weights that "affidavit" weights under Rule 4 are next in line. Rule 21(a) - On grain sold basis official loading weights on which the seller does not furnish Rule 2(c) weights the Buyer may settle on destination weights and "shall send the Seller a weight certificate meeting requirements of Rule 2(c) or Rule 4 or a weight certificate or freight bill from railroad to document a railroad track scale weight." Truck weights are omitted as an acceptable alternative.
5. The Arbitration Committee found that the affidavit weights in this case (even though dated after the fact) were the most accurate and representative weights available covering this shipment and should be used by all parties in final settlement.

The Defendant shall pay the Plaintiff

205,100# X 2.4892 Bu. (3.08 less .5908 frt.) = \$9,116.70
Plus interest at 14.25% (avg. banker's accept
rate 7/28/80 through 5/31/81 = 307 days) = 1,092.69
10,209.39

(The difference from the claim of \$9,789.24 represents factors other than weight differential and is not considered as part of this arbitration.)

The Cross-Defendant shall pay the Cross-Plaintiff

205,100# X 2.3992 Bu. (2.99 less .5908 frt.) = \$8,787.07
Plus interest at 14.25% (avg. banker's accept
rate 7/28/80 through 5/31/81 - 307 days) = 1,053.18
9,840.25

/s/ Jerry L. Bumgardner, Chairman
Ralston Purina Company
St. Louis, Missouri

/s/ William B. Bates
ConAgra
Omaha, Nebraska

/s/ Merlin Mills
Archer Daniels Midland Company
Minneapolis, Minnesota