NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

ARBITRATION CASE NUMBER 1584

Plaintiff: Agri Industries Inc., Des Moines, Iowa

Defendant: Independent Grain Company, Fort Wayne, Indiana

January 20, 1983

Statement of the Case

On Oct. 16, 1980, Agri Industries, the Plaintiff, sold Independent Grain Company, the Defendant, via Carolina Brokerage Company, four three-car Illinois Central Gulf Railroad (ICG) multi's. Terms on the Plaintiff's confirmation called for destination official weights. No confirmation was executed by the Defendant. The broker's confirmation stated first official weights, to which no exception was taken by the Plaintiff. Billing instructions submitted to the railroad clearly specified "weigh en route." The cars were not weighed, en route or at destination. The Defendant made settlement on bill-of-lading weights. The Plaintiff rejected this settlement. The Defendant then proposed a weight derived from an average of 53 cars from different origins. The result of the average equaled the 195,249 pounds per car, which would improve the settlement to the Plaintiff by 12,694 pounds in excess of the original settlement. The Plaintiff rejected the proposal. The Plaintiff countered with a six-car average consisting of six heavily overloaded cars, which produced 309,178 pounds in excess of the original settlement.

Points of Contention

The point in dispute was the method in which an unweighed shipment is to be settled. No other terms of the contract were in dispute.

The Decision

The arbitration committee unanimously found for the Defendant, Independent Grain Company, and denied the Plaintiff's claim. The basis for the decision was as follows:

--The broker's confirmation of "first official weights" was unchallenged by the Plaintiff and therefore stands. Grain Trade Rule 21 is not specific as to who has the greater responsibility, the buyer or seller, to provide "first official weights." The onus does not rest entirely on the seller's shipper because of the absence of "loading weights." Nor does it rest entirely on the buyer/receiver because of the absence of "destination weights." The railroad erred in not providing track scale weights. The effort to negotiate a reasonable settlement should be approached in an even-handed manner by both parties.

--Had track weights been obtained, railroad weights would have been a satisfactory basis for settlement.

--This situation is not unusual. Railroads have failed many times to provide requested weights. Hundreds of cars are settled by negotiation, usually based upon an average of shipments made prior to and after the effected shipment. It is on this point that the parties disagreed. The Defendant proposed to average 53 cars of similar cubic capacity from a different origin. The Plaintiff rejected the proposal and submitted a claim on the basis of the average of six cars (which far exceeded the maximum railroad weight limit of 263,000 pounds).

1. Original settlement based upon billed weights:	1,158,800 pounds
2. Adjusted settlement proposed by the Defendant on 53-car average weights:	1,171,494 pounds
3. Counterproposal by the Plaintiff:	1,467,978 pounds
4. Maximum permissible weights permitted by net weight/tares:	1,158,800 pounds

--The bill-of-lading weights represented the maximum gross weight (263,000 pounds) that the railroad would accept. The net weights were calculated by the shipper by subtracting the car tare from the maximum railroad gross weight limit of 263,000 pounds.

--It can be assumed that if cars billed in excess of 263,000 pounds had been applied, the railroad would have rejected same and would have required the overload to be removed. The cars would not have been permitted to move in such an overloaded state. Thus, it can be argued that under normal conditions, overloaded cars would not be applied to contract. (Note: AAR Field Manual, Interchange Rules, Rule 91: Cars may not exceed load limit specified for four-axle car, which on these type cars, gross load limit is 263,000 pounds). The AAR load limits, which may vary from road to road, are imposed for safety reasons. The load limits are well-known and monitored, and have been in effect for years.

--The Plaintiff's claim is based upon six cars which would have a gross weight of approximately 320,000 pounds -- or almost 50,000 pounds more than the applicable AAR/ICG load limit. If such heavily overloaded cars had been applied to this contract and been weighed by the railroad en route (and contained the amount of grain contended by the shipper) the cars would not have been permitted to proceed until lightened to the maximum weight limit of 263,000 pounds. Assuming this scenario, the cars would have contained the amount billed by shipper.

--Depending upon time, place and circumstance, there may be a modest amount of "grace" permitted on an overloaded car. There is not a specific quantity but the arbitration committee is persuaded that it is, in any event, nominal. Had the cars been weighed by the railroad, the maximum overload permitted to move on to destination likely would not have exceeded the approximate 2,000 pounds per car offered by the Defendant in its adjusted settlement proposal.

--The most conclusive and persuasive argument is the risk of loss to the Plaintiff if the railroad had caused a total loss before weighing the cars. Had there been a total loss, the Plaintiff would have settled, without recourse, on the basis of the billed weights (1,158,800 pounds). The railroad was clearly instructed to weigh the cars. It did not do so, thereby creating the necessity to negotiate a weight settlement. Should the Plaintiff insist on a far larger settlement from the Defendant than what the railroad would do for the shipper? Why should it, if the Plaintiff and Defendant have equal standing in terms of blame? The railroad was to blame, not the Defendant or the Plaintiff. The remedy is to negotiate a reasonable settlement, and not to "punish" one party or the other.

The Award

Therefore, the arbitration committee concludes that the Defendant made a reasonable effort to make a negotiated settlement with the Plaintiff, especially since the Defendant attempted to cure a problem not of its making. The proposed adjusted settlement of the Defendant exceeded the maximum railroad weight limit of the six cars shipped by 12,694 pounds. The committee unanimously rejected the Plaintiff's claim and considered the transaction completed on the basis of the Defendant's adjusted settlement.

Submitted with the consent and approval of the arbitration committee, whose names are listed below:

Robert Wilson, Chairman
Bunge Corporation
St. Louis, Missouri

Don McElmury
CPC International
Englewood Cliffs, New Jersey

Millard Roberts
FCX Inc.
Raleigh, North Carolina