



# Arbitration Decisions

February 3, 1983

Arbitration Case Number 1586

Plaintiff: Bunge Corporation, New York, New York  
Defendant: Agri Industries Inc., West Des Moines, Iowa

Cross-Plaintiff: Agri Industries Inc., West Des Moines, Iowa  
Cross-Defendant: The Early & Daniel Company Inc., Cincinnati, Ohio

Cross-Plaintiff: The Early & Daniel Company Inc., Cincinnati, Ohio  
Cross-Defendant: Indiana Farm Bureau Cooperative Association Inc.,  
Louisville, Kentucky.

Arbitration Case Number 1587

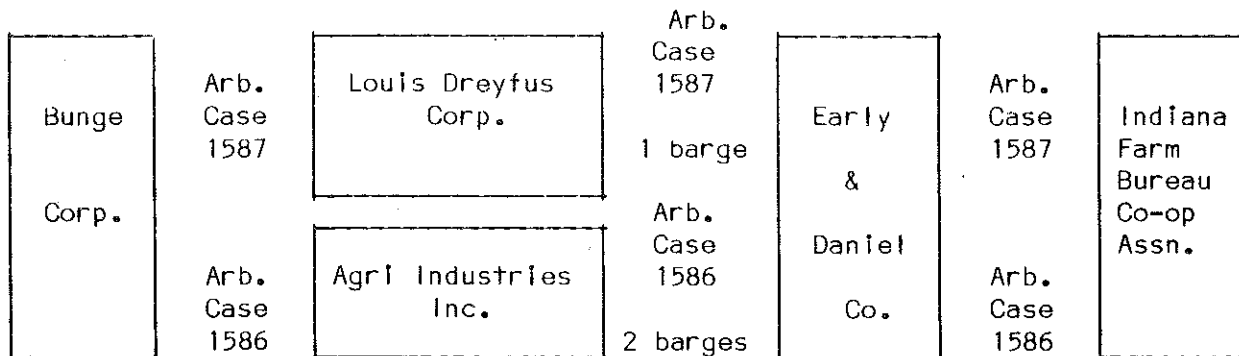
Plaintiff: Bunge Corporation, New York, New York  
Defendant: Louis Dreyfus Corporation, Stamford, Connecticut

Cross-Plaintiff: Louis Dreyfus Corporation, Stamford, Connecticut  
Cross-Defendant: The Early & Daniel Company Inc., Cincinnati, Ohio

Cross-Plaintiff: The Early & Daniel Company Inc., Cincinnati, Ohio  
Cross-Defendant: Indiana Farm Bureau Cooperative Association Inc.,  
Louisville, Kentucky

The Facts

Arbitration Case Number 1586 concerns a string trade involving two barges sold by the Plaintiff, Bunge Corporation, to the Defendant, Agri Industries Inc. Agri Industries Inc., in turn, sold to The Early & Daniel Company Inc., which intended to meet a commitment to Indiana Farm Bureau Cooperative Association Inc. Arbitration Case Number 1587 concerns one barge sold by Bunge Corporation to Louis Dreyfus Corporation, which in turn sold the barge to The Early & Daniel Company Inc., which intended to meet a commitment to Indiana Farm Bureau Cooperative Association Inc. A diagram of these transactions follows:



Sales dates and freight rates are totally different at each step in the respective trades, with freight rates ranging from 150 to 350 percent of WFB.

Bunge Corporation failed to provide these barges in a timely fashion so as to permit arrival at the loading port designated by Agri Industries, Inc. as per contract terms, claiming "force majeure" as the excuse for non-performance. On January 16, 1981, Indiana Farm Bureau, the party at the end of the string trade, bought in the two barges at a rate of 350 percent. Agri deducted \$22,373.09 from an unrelated settlement with Bunge in an attempt to recover the freight difference, which it claimed was due. Bunge, through this arbitration proceeding, is attempting to recover these funds with interest from June 19, 1981.

#### The Decision

The arbitration committee unanimously finds for Indiana Farm Bureau Cooperative Association, which acted correctly. Indiana Farm Bureau was entitled to buy-in the freight which Bunge did not furnish in contractual fashion, and consequently which Indiana Farm Bureau did not receive on a timely basis. Since all money due as a result of the buy-in already has been withheld by the parties in the string trade, no money is awarded as a result of this decision.

In arriving at this decision, the arbitrators examined the points raised in the various arguments, rebuttals, and surrebuttals. It is believed that for the sake of clarity, the following points should be discussed:

- The committee believed that the "force majeure" clause, which was part of the affreightment contract, did not apply to this situation. While it was recognized that delays did occur on the Ohio during the first half of January, these delays were not of such a magnitude or duration that a "force majeure" situation could be considered to have existed. The information furnished by Bunge Corporation indicates that tows were moving at all times. And while the U.S. Army Corps of Engineers issued warnings, they were of a routine nature and did not mean that all traffic had ceased to move on the waterway.

The fact that the M/V Wm. Pitt., which left Cairo on January 12, 1981, arrived at Cincinnati on January 16, 1981 helped to further negate the "force majeure" argument. Bunge acknowledged in its submission that river conditions were far from perfect during the early January period, and simultaneously admitted that it waited until January 12, 1981 to tender two barges to Agri Industries Inc.

- The contract called for placement of barges during the first half of January 1981 at a river location designated by Agri Industries Inc., not a tender of barges leaving on a boat on January 12, 1981. Agri Industries was under no obligation to accept barges tendered at Cairo, whose timely arrival was subject to question.
- The arguments raised about time extensions during periods of adverse river navigation are not relevant. The arbitrators agreed that situations of this nature are often worked out in an amicable give-and-take basis when a trade is limited to two parties. However, when it becomes part of a string trade, such agreements become more difficult and any party to the trade has the right to insist upon strict contract adherence.

-- Indiana Farm Bureau Cooperative Association bought-in two barges on January 16, 1981. Nothing prevented Bunge from having followed this course of action between January 12 and January 15, or at an earlier date so as to meet its commitments in a timely fashion. Had such a course of action been followed, it might have procured the two barges at a rate lower than 350 percent paid on January 16, 1981.

However, Bunge believed that it was entitled to extra time to effect placement, first because it was working under what it saw as "force majeure" conditions; and second because others were willing to make extensions. This approach, in the eyes of the arbitrators, is entirely without merit, as the facts simply do not support it.

The fact that other trades shipped at the same time and in the same geographical area were extended by mutual consent proved that a great deal of good will governs many of our trade relationships. But no one is required to grant such extensions. The fact that some parties did agree to such extensions certainly does not govern as a precedent for other trades.

For these reasons, the committee concludes that the Plaintiff, Bunge Corporation, is at fault. Since money already has been withheld, no award to the buyers is necessary. Further, Bunge is not entitled to an award. Accordingly, the committee awards no damages.

Submitted with the consent and approval of the arbitration committee, whose names appear below.

Henry Fisher, Chairman  
Continental Grain Company, St. Louis, Missouri

Richard Mittelbush  
Peavey Company, Minneapolis, Minnesota

Robert Peyton  
Cargill Inc., Baton Rouge, Louisiana