



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

June 23, 1983

Arbitration Case Number 1600

Plaintiff: Grand River Grain, Webberville, Michigan

Defendant: Cargill Inc., Maumee, Ohio

Statement of the Case

This dispute involved a train unloading at Norfolk, Virginia, two days later than the date specified in the contract. Contractually, the two parties had agreed that October 24, 1982 was to be the latest date for unloading of the train, but the train was not unloaded until October 26, 1982.

The plaintiff, Grand River Grain, sought damages of 5 cents per bushel per day plus two days of interest, or \$21,690.47. Grand River Grain, in support of that claim, stated that the elevator was plugged and soybean receipts decreased from an average of 28,014 bushels per day between October 22 and October 27 to 9,118 bushels on October 28 and 1,645 bushels on October 29. On October 30, 19,015 bushels were received because the plaintiff transferred 175,000 bushels of corn to flat storage and loaded -- and subsequently, unloaded -- eight hopper cars of soybeans. Grand River Grain also presented evidence that between October 22 and October 28, the cash basis advanced 10 3/4 cents per bushel.

The defendant, Cargill Inc., admitted that the train was not unloaded on October 24. But it said it did offer, on the following day, to pay 1/10th cent per day plus interest because of the delay. On October 27, Cargill offered assistance to relieve the congestion via truck or rail. Grand River Grain did not accept the proposals.

The defendant argued that a case of force majeure existed in that a rain storm prevented the loading of a ship and, as the elevator was plugged, the train could not be unloaded. Cargill's contract contained a clause which addressed circumstances beyond the buyer's control.

The defendant also argued that the plaintiff should have followed Grain Trade Rule 10 of the National Grain and Feed Association and put Cargill on notice. Following this, the plaintiff should have selected one of the three options listed under Grain Trade Rule 10, the defendant maintained.

Cargill stated that 5 cents-per-bushel-per-day plus 2 percent over prime interest was an arbitrary and unwarranted penalty and there were no Trade Rules or contractual provisions that entitled the plaintiff to impose penalty fees.

The Decision

It is clear that the plaintiff suffered damages as a result of the train in question being unloaded two days later than the date contractually specified. The question for the arbitration committee to decide was the dollar amount of damages.

The committee did not believe a rain storm at a port location was the kind of occurrence where one could seek refuge in a force majeure clause. Nor did the committee see how Grain Trade Rule 10 of the National Grain and Feed Association was applicable in that instance. Grain Trade Rule 10 addresses the circumstances where a contract is written with a buyer to furnish equipment and there is a failure to do so. As a practical matter, with that train being delayed in unloading at a port location, the only option available was to extend the contract.

Based upon the information presented, the committee found that the plaintiff lost the receipt of 54,264 bushels of soybeans and made an effort to keep the loss of receipts to a minimum. Further, the committee attached a margin of 12 cents per bushel for the time of year and location. Interest also was awarded for two days at 1 percent above the prime rate. The plaintiff is due \$7,179.

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

David Parker, Chairman
Farmers Export Company
Overland Park, Kansas

Merrill Donoho
General Mills Inc.
Minneapolis, Minnesota

Roland Scheiderer
Ohio Grain Company
Mechanicsburg, Ohio