NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

September 8, 1983

Arbitration Case Number 1603

Plaintiff: Farmers Peanut Company of Sowega Inc., Whigham, Georgia

Defendant: Grain Sales Company Inc., Atlanta, Georgia

Statement of the Case

This dispute involved the shipment of 10,000 bushels of corn by the Plaintiff to Tampa, Florida. One carload of the shipment was rejected by the buyer in Tampa, Florida. The Defendant was the broker of the contract. The only contract that was exchanged was the broker's contract (Grain Sales Company Inc. contract number 0340).

On August 20, 1982, the Defendant, as a broker, sold for the Plaintiff three cars of corn (10,000 bushels) to Tampa Independent Dairy Farmers Association as specified in the Defendant's contract number 0340. The terms of the contract included origin state grades, with a mini-column test to be performed to detect the presence of aflatoxin.

On August 23, the Plaintiff shipped three cars of corn to Tampa, Florida. Origin official samples and grades were obtained on each car of corn by the Georgia Department of Agriculture, which is certified to perform official inspections under authority of the U.S. Grain Standards Act. The mini-column test at origin performed by the Georgia Department of Agriculture stated "none detected," in reference to parts per billion of aflatoxin in the sample for corn shipped in car number SCL 242087.

On August 27, the Defendant was notified by the buyer that its in-house mini-column test conducted at destination indicated the presence of aflatoxin in excess of 20 parts per billion in corn in two rail cars, numbers SCL 241819 and SCL 242087. The Defendant instructed the buyer to recheck its test because the mini-column test obtained at origin had detected no aflatoxin. The Defendant also asked that the buyer have an official state thin-layer test performed.

The Plaintiff responded that it was not its problem since it had performed its obligations under the contract. On August 28, 1982, the Defendant stated that the buyer informed the Defendant that the thin-layer test results were as follows: car number SCL 241819 = 80 parts per billion aflatoxin; and car number SCL 242087 = 30 parts per billion aflatoxin (performed by a private laboratory). The buyer further stated that these cars were not being unloaded, pending the completion of a thin-layer test by the state of Florida. The Defendant notified the Plaintiff of the test results.

On August 30, the buyer reported to the Defendant that the state of Florida's thin-layer test results indicated car number SCL 241819 was free of afla-

toxin, but that car number SCL 242087 contained 46 parts per billion of aflatoxin. The buyer informed the Defendant that it was rejecting rail car number SCL 242087, and requested that the car be moved. The Defendant notified the Plaintiff of the conversation with the buyer. The Defendant recommended to the Plaintiff that the car in question be returned to Whigham, Georgia. The Plaintiff stated after several phone conversations with the Defendant that it believed there was no choice but to accept the grain back in Georgia, even though the Plaintiff remained convinced that nothing was wrong with the car of corn.

When the car in question arrived in Whigham, Georgia, the Plaintiff had a mini-column test performed on each hopper of the car. The Plaintiff also had an official sample taken, which was sent to the Albany, Georgia, U.S. Department of Agriculture laboratory for an aflatoxin thin-layer analysis. All three mini-columns showed no aflatoxin present, and the offical thin-layer test by the USDA laboratory found the presence of 8 parts per billion of aflatoxin.

The Plaintiff stated that it adhered to the terms of the contract and therefore sought damages of $1,534.75 for freight, demurrage charges, loss of 5 cents per bushel, phone calls, time, unloading, sampling and miscellaneous expenses. The Defendant asked for clarification of the buyer's right to have grain inspected at destination.

The Decision

It is clear that the Plaintiff performed the requirements of the Defendant's contract. The Plaintiff sold the shipment based upon origin state grades, and origin mini-column tests for aflatoxin also were performed. The arbitration committee was unsure how the Defendant became a party to the claim, since it served as a broker between the seller and buyer. But this issue was never raised in this case. Therefore, the arbitration committee concluded that the Defendant must have accepted the buyer's obligation.

The Defendant asked for a clarification of the buyer's right to have grain checked at destination. Although this was not an issue in the damage claim, the arbitration committee believed that an answer should be given. Trade Rules and practices clarify this question very simply and exactly. When a buyer makes a purchase based upon origin grades, the buyer assumes the grade factors as determined by the certificate that governs the grade so long as the grade certificate obtained is the same type specified in the terms of the contract. The opposite would govern if destination grades were the terms to govern a contract. If the buyer wants to reserve the right to check grain at destination and if the buyer believes there is a possibility of a sufficient discrepancy between destination and origin grades of the same type of grade certificates to warrant the rejection of the grain shipment, then the buyer and seller need to agree at the time a contract is written. After contract terms are accepted by both parties, they are obligated to abide by them.

The arbitration committee found that the Plaintiff fulfilled its contractual obligations. Therefore, the committee awarded the Plaintiff, as requested in its complaint, the amount of $1,534.75, plus interest at 1 percent above the prime rate from the day the car arrived in Tampa, Florida, until final settlement was made.

Robert W. Pegan, chairman
Central Soya Company Inc.
Cincinnati, Ohio

Dale Mayhew
Lansing Grain Company
Lansing, Michigan

Edward Milbank
Milbank Mills Inc.
Chillicothe, Missouri