



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

December 1, 1983

Arbitration Case Number 1604

Plaintiff: Tri-County Stockdale Co., Joliet, Ill.

Defendant: Percy Grain Services Inc., Clare, Ill.

Statement of the Case

On March 26, 1982, Tri-County Stockdale Co. (the seller) and Percy Grain Services Inc. (the buyer) entered into a written contract for the purchase of 15,000 bushels of U.S. No. 1, maximum 14 percent moisture White Hilum variety soybeans. The basis price was fixed at the Chicago Board of Trade September option minus 10 cents per bushel delivered to Percy Grain Services Inc., Clare, Ill. The seller had the option to price the contract by telephonic notification to the buyer during CBOT trading hours or by telephoning the buyer for overnight bids following the close of the exchange's trading hours. All pricing was to be completed by Aug. 31, 1982. The contract also stated it would be governed by the National Grain and Feed Association's Trade Rules and, to the extent not in conflict with said rules, by the Uniform Commercial Code.

The dispute centered on when the contract was priced. The seller contended that the contract was priced at some unspecified time prior to June 29, 1982. The seller presented as evidence a hand written notation of a confirmation statement sent him by the buyer's auditor. In this notation, the seller stated that it priced the contract when the September option was traded at \$6.74¹/₄, which would price the beans at \$6.64¹/₄ per bushel.

There was no written confirmation of price determination exchanged between either contractual party. The soybeans were delivered to the buyer between July 22 and July 31, 1982.

The buyer contended the contract had not been priced before Aug. 31, 1982, and subsequently priced the contract on the close of the CBOT market on Aug. 31 at \$5.43¹/₂ per bushel in accordance with the buyer's perception of the contract.

The Decision

The arbitration committee found there was a communication breakdown between the buyer and the seller caused by lack of adherence to the prescribed Trade Rules. The seller used the buyer's auditor's confirmation as evidence of the soybeans being priced. The auditor was not an employee of the buyer and would in no way be empowered to act for the buyer in such matters. The seller did not submit any long distance telephone records covering the period prior to June 29, 1982. This would not necessarily prove pricing had taken place, but would show there had been communication between the parties. The seller gave no names to whom he might have talked concerning the pricing matter prior to June 29, 1982.

It was the committee's belief that a seller, upon receiving an auditor's confirmation that was contrary to its understanding of contract, would call the other party immediately to reach an agreement. This was not done.

Considering the facts presented, the committee found no other course than to rely strictly on the Trade Rules in arbitrating this dispute.

Grain Trade Rule 6(a), concerning confirmation, states:

"It shall be the duty of both buyer and seller, not later than the close of business day following date of trade, to mail, each to the other, a confirmation in writing (the buyer a confirmation of purchase, and the seller a confirmation of sale), setting forth the specifications as agreed upon in the original articles of trade. Upon receipt of said confirmation the parties thereto shall carefully check all specifications named therein, and upon finding any differences, shall immediately notify the other party to the contract, by wire, or telephone and confirm in writing, except in the case of manifest errors and differences of minor character, in which event, notice by return mail will suffice."

According to the evidence presented, written confirmation had to originate with the seller.

The plaintiff (seller) did not make written confirmation of having verbally priced the contract in question. The defendant (buyer) having received no written confirmation and believing that no verbal pricing action had occurred, could not make written confirmation.

Therefore, the arbitration committee decided in favor of the defendant, Percy Grain Services Inc.

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

Howard R. Wright, chairman
Baltic Mills Inc.
Vincennes, Ind.

John McCulley
Oakville Feed & Grain Inc.
Oakville, Iowa

Robert Obrock
Landmark Inc.
Columbus, Ohio