NATIONAL GRAIN AND FEED ASSOCIATION
Arbitration Decisions

May 3, 1984

Arbitration Case Number 1607

Plaintiff: Burdick Grain Co., Minneapolis, Minn.
Defendant: Anson Brothers Farms, New Richmond, Wis.

Statement of the Case

Anson Brothers Farms sold 100,000 bushels of U.S. No. 2 yellow corn to Burdick Grain Co. at -35 December delivered Port ConAgra Oct. 16 through Nov. 20, 1982. Burdick's confirmation of purchase was signed by both parties. On Nov. 30, 1982 Burdick Grain Co. issued a contract change allowing delivery to be deferred to May 1983 arrival. The basis was changed to -48 May reflecting the broad spread at that time of 13 cents per bushel premium May over December. Both parties signed the contract change. In an April 19, 1983 telephone conversation, Anson Brothers Farms informed Burdick Grain Co. that they would be unable to meet the May, 1983 delivery.

On April 20, 1983, Mr. Fields of Burdick Grain Co. wrote a letter to Mr. Anson of Anson Brothers Farms declaring a breach of contract and advised him that Burdick Grain Co. would buy-in the corn to cover the contract at Anson Brothers Farms' expense. On April 21, 1983 John Hacking, attorney for Anson Brothers Farms wrote a letter to Kenneth DeWerff, attorney for Burdick Grain Co., stating Anson was unable to deliver on the contract within the specified period. The letter indicated Anson Brothers Farms believed, as a result of conversations with Burdick Grain Co., that it could further defer delivery to December 1983 and roll the basis forward from May to December.

Burdick Grain Co. made two purchases of two hopper cars each on the Minneapolis spot market as follows:

-- April 26: two hopper cars at +4 May.
-- April 27: two hopper cars at +5 May.

An invoice for $52,500 was prepared and forwarded to Anson Brothers Farms on July 1, 1983. This covers the difference in contract price versus market or 52.5 cents per bushel for the entire 100,000 bushel contract.

The Decision

The arbitration committee decided in favor of Burdick Grain Co. Burdick's invoice for $52,500 is valid. In addition, the company is entitled to interest at the prime rate from July 1, 1983 (the date of the invoice) to the date of payment of the invoice.

Post Office Box 28328 · Washington, D.C. 20005 · Telephone 202/783-2024

Four National Grain and Feed Association Grain Trade Rules are cited as reasons for the decision:

--Grain Trade Rule 6(a) states, "It shall be the duty of both the buyer and the seller, not later than the close of business day following date of trade, to mail, each to the other, a confirmation in writing setting forth the specifications as agreed upon in the original articles of trade." (emphasis added)

--Grain Trade Rule 6(c) states, "If either buyer or seller fails to send out confirmation, the confirmation sent out by the other party will be binding upon both in case of any dispute."

--Grain Trade Rule 41 states, "The specifications of a contract cannot be altered or amended without the expressed consent of both the buyer and the seller. Any alteration mutually agreed upon between the buyer and the seller must be immediately confirmed by both in writing." (emphasis added.)

The original contract terms, together with the revisions, are very clear. Anson Brothers Farms had an obligation to deliver the corn in May 1983. Grain Trade Rule 10 spells out the course of subsequent action: "When the seller finds that he will not be able to complete a contract within the agreed limit, it shall be his duty at once to advise the buyer by telephone or telegraph, whereupon it shall be the duty of the buyer at once to elect either to (a) agree with the seller upon an extension of the contract; (b) after having given notice to the seller to complete the contract, the buyer, by the exercise of due diligence, will buy-in for the account of the seller the defaulted portion of the contract." Trade Rule 13 defines "buy-in." It states, "When the words 'buy-in' occur in these rules they shall mean an actual purchase of grain of like kind and quantity on the open market; provided that when this is not feasible or would result in undue penalty to the seller, the buyer shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the seller."

Burdick Grain Co. purchased four cars on two successive days on the Minneapolis spot market and established a fair market value for the corn. It is entitled to the entire amount of the contract of 100,000 bushels at 52.5 cents per bushel difference between contract price -48 May and established fair market value +4.5 May.

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

William E. Westerbeck, chairman
American Maize-Products Co.
Chicago, Ill.

Thomas F. Feldmann
West Central Cooperative
Ralston, Iowa

Gary W. McKinney
Lincoln Grain Co.
Atchison, Kan.