



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

September 28, 1984

Arbitration Case Number 1609

Plaintiff: ConAgra Feed Ingredient Merchandising Co., Fort Collins, Colo.
Defendant: Sky High Grain Inc., Monte Vista, Colo.

Statement of the Case

The Plaintiff, ConAgra Feed Ingredient Merchandising Co., had contracted to purchase 100,000 bushels of barley from Sky High Grain, contract number 200204. The contract called for U.S. No. 2 barley, 100,000 bushels, shipment December 1982 through February 1983, 47 pounds or better per bushel, market discounts to apply, 10-mile radius of scale, at \$4.25 per hundredweight. The contract was signed by both the buyer and seller. ConAgra notified Sky High Grain that it would like a 60-day extension for shipment (March and April 1983), at an additional price of 5 cents per hundredweight.

ConAgra neglected to send a written confirmation of the modification of contract 200204. Sky High Grain notified ConAgra in a letter dated Feb. 24, 1983 that the contract "will be terminated at the closing of the business day (Feb. 28, 1983) due to lack of performance by the buyer, interpreted by Rule 10 of the Grain Trade Rules." This letter was followed by a Western Union "Mailgram" dated Feb. 28, 1983 from ConAgra to Sky High Grain advising Sky High Grain that ConAgra expected the extension of the contract and agreed upon the carrying charge charge of 5 cents per hundredweight per month. However, on March 1, 1983, Sky High Grain sent a reply telegram declining extension of the contract and chose to cancel the defaulted portion of the contract at fair market value for the unshipped balance as provided for in Grain Trade Rule 10.

ConAgra contended that Sky High Grain owed it for the unshipped portion, as per Grain Trade Rule 10 Buyer's Conveyance (c) of the contract which was 77,294 bushels or 37,101 hundredweight at \$4.70 per hundredweight, for a total of \$16,695.45. The \$4.70 per hundredweight is the price that ConAgra contended was the fair market value on Feb. 28, 1983.

The Decision

The arbitration panel concluded that the principal component of the dispute requiring arbitration concerned establishing the fair market value of the grain on the canceled portion of the contract as of Feb. 28, 1983. ConAgra had asked for an extension of the contract but failed to confirm its request in writing; Sky High Grain elected to stand on the original contract and chose to use Grain Trade Rule 10(c), Buyer's Conveyance, and notified ConAgra in a letter dated Feb. 24, 1983.

The arbitration panel believed that Sky High Grain executed its option in a business-like manner as prescribed in Grain Trade Rule 10. This left the panel with the difficult decision as to what the fair market value of the barley was on Feb. 28, 1983.

The arbitration panel found it most difficult to determine a fair market value on a more or less secondary commodity and in an area in which there are discounts made for farm pick up, etc. It also is an area where it is difficult to establish a market in that the commodity (in this case barley) does not necessarily trade on a daily basis.

In reviewing the price information submitted to the panel, it was determined that ironically, the fair market value of the grain on Feb. 28, 1983 was the same as the contract price of \$4.25 per hundredweight. Upon this conclusion, the panel ruled that ConAgra does not have a valid claim and that Sky High Grain does not owe ConAgra \$16,695.45. The arbitration panel does believe that ConAgra owes Sky High Grain for the unpaid balance due on contract 200204 for grain that ConAgra had picked up but for which it had not paid. This amount equals \$21,511.68, plus interest at 1.5 percent per month from the time the grain was picked up until payment date.

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

LEW MEIBERGEN, chairman
W.B. Johnston Grain Co.
Enid, Okla.

P.R. DALY
Cargill Inc.
Kansas City, Mo.

DANIEL WALSKI
Luckey Farmers Inc.
Woodville, Ohio