NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

Volume XXXVIII, Number 1, January 10, 1985

Arbitration Case Number 1613

Plaintiff: Growmark Inc., Bloomington, Ill.

Defendent: Cargill Inc., Minneapolis, Minn.

Statement of the Case

The defendent acquired from the Commodity Credit Corporation (CCC) 1,100,179.99 bushels of U.S. No. 2 yellow corn in-store at the plaintiff's elevator in Paxton, Ill., in a "swap" arrangement under the U.S. Department of Agriculture's payment-in-kind program of 1983. On Oct. 25, 1983, both the defendent and plaintiff received a wire from CCC releasing 420,000 bushels for the account of the defendent. This was the first of seven releases.

On Oct. 26, 1983, the defendent ordered Unit Train No. 22004 to the plaintiff's elevator in Paxton, Ill., which was placed Friday, Oct. 28, 1983. On Oct. 27, 1983, both parties exchanged wires stating that the grade on the train would average U.S. No. 2 yellow corn, 54 test weight, 15.5 percent moisture, 5 percent damage and 3 percent foreign material with car-by-car discounts as follows:

--Damage: 1 cent for each point from 5 to 7 percent.

--Foreign Material: 1 cent for each point from 3 to 4 percent.

On Oct. 28, 1983, the defendent sent a wire to the plaintiff stating that if the train/individual cars were out of contract to call to negotiate the discounts for same prior to billing. The wire also restated that the contract specifications on the train called for a U.S. No. 2 yellow corn grade average.

The Gibson City Grain Inspection Service rejected 21 of the hopper cars for grain service, which were subsequently cleaned by the plaintiff. The plaintiff testified that it informed the defendent's personnel of the rejection of these cars. However, the defendent testified that it did not receive any notification.

Loading and grading of the cars were completed early on the evening of Saturday, Oct. 29, 1983. At that time the defendent notified the plaintiff that the train averaged 5.29 percent damage with 77 cars (65 percent) grading higher than 5 percent damage and 18 cars (15 percent) grading higher than 7 percent damage.

It was agreed that 18 cars would have to be reloaded to bring the train into the average grade. The plaintiff testified that it agreed to the reloading with any overtime to be paid by the defendent. The plaintiff began reloading the cars on Sunday, Oct. 30, 1983, with the reloading process completed and the train released on Oct. 31, 1983. On Nov. 1, 1983, the plaintiff invoiced the defendent for:

--origin official weights.

--federal appeal grades.

--cleaning of 21 cars.

--weighing charges on 118 cars.

--5 cents-per-bushel minimum storage.

--overtime charges for the reloading of 18 cars.

On Nov. 4, 1983, the defendent sent a letter to the plaintiff taking exception to the:

--cleaning charges.

--storage charges.

--overtime charges for Sunday.

The plaintiff justified its storage charges based upon its tariff. Storage charges are also at issue on subsequent loadings. The following is the plaintiff's tariff:

> Storage Rates: "First year of storage from date of deposit, first 120 days or any part thereof, 20 cents per bushel; thereafter one-eighth (1/8 cent) per bushel per day to first anniversary date of deposit; then succeeding years of storage, from anniversary date of deposit, first 120 days or any part thereof, 21 cents per bushel; thereafter one-eighth cent (1/8 cent) per bushel per day to the next anniversary date of the deposit, when this minimum reapplies."

The Decision

This case raised three major issues:

> Car Cleaning Charges: There is conflicting testimony about whether the plaintiff notified the defendent that 21 cars needed to be cleaned before they could be loaded for the late October 1983 train that was placed by the defendent to the plaintiff's elevator.
>
> Neither party disputes that the cars were, in fact, cleaned by the plaintiff, and therefore a service was performed. The necessity of cleaning some of the cars in a train is a common occurrence. If the defendent was not told of the necessity to clean these cars as claimed, the defendent could have protected its interest by asking whether all the cars were approved for loading. Five cars also were cleaned before loading in April 1984. But there is no testimony as to whether the defendent agreed to the actual cleaning of these cars or to the cleaning charges. In both cases, the plaintiff submitted an invoice at the rate of $70 per car.

Although the arbitration committee believes there was negligence by both parties in the handling of this matter, the fact remains that the plaintiff performed a service -- car cleaning -- for which it is entitled to be compensated. We do not believe this arbitration committee should "determine" what is a "reasonable" charge for car cleaning. Therefore, we award these charges to the plaintiff as invoiced.

Storage Charges: It is a common occurrence in the industry to purchase warehouse receipts, or receive them on delivery of a futures contract, for the purpose of loading out the grain. There is no precedent in the industry for assessing a new minimum charge in such instances. In this case, the plaintiff's tariff clearly referred to "date of deposit" or "anniversary date" concerning applicable charges. A change in ownership would not alter those dates. In addition, a CCC loading order was issued with the loadout charge paid by CCC. It is apparent from testimony that the defendent wanted to load the grain and not utilize the plaintiff's elevator for storage of the grain.

Storage charges are awarded to the plaintiff at the rate of 1/8th cent per bushel per day. These charges are calculated from the date of release to the date of loadout.

Overtime Charges: Although the plaintiff did not meet the grade requirements of the train during the initial loading, it was under no obligation to unload and reload certain cars on overtime (Sunday, Oct. 30, 1983) to remedy the situation. That is, the plaintiff could have waited to do so until Monday, Oct. 31. But the defendent requested that the plaintiff unload and reload the cars to make grade on Sunday, an overtime day. The plaintiff agreed to do so if the defendent would pay the overtime rate. Therefore, the overtime charges in dispute should be awarded to the plaintiff.

The Award

Nov. 1, 1983	Storage:	$ 3,150.00	
	Other:	7,349.04	
	Overtime:	730.22	
	Overtime:	315.90	
	Car cleaning:	1,470.00	
	Overtime:	884.68	
			$13,899.84
Feb. 24, 1984	Storage:	$ 687.50	
			$ 687.50
April 2, 1984	Storage:	$17,945.36	
	Other:	2,014.50	
			$19,959.86
April 19, 1984	Storage Examinations, etc.	$ 389.00	
			$ 389.00
May 1, 1984	Storage:	$ 5,706.13	
	Other:	1,077.40	
	Car cleaning:	350.00	
			$ 7,133.53
		Total:	$ 42,069.73

Interest is awarded at a rate of 13 percent, which is 1 percent more than the prime rate during the applicable period. Interest is to be paid from the above dates to the date of payment.

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

Lynn B. Olson, chairman
Continental Grain Co.
Kansas City, Mo.

Mr. Edward O'Rourke
Union Equity Co-op Exchange
Enid, Okla.

Mr. Richard Pittelkow
Lauhoff Grain Division, Bunge Corp.
Danville, Ill.