



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

May 2, 1985

Arbitration Case Number 1616

Plaintiff: Fred Webb Inc., Greenville, N.C.
Defendant: Goldkist Inc., Atlanta, Ga.

Statement of the Case

On July 26, 1983, Fred Webb Inc., contracted with Goldkist Inc., through a broker -- Edward E. Smith and Co. Inc. -- for two multistacks of U.S. No. 2 yellow corn, delivered to Hilliard, Fla. Edward E. Smith and Co.'s and Goldkist's confirmation called for first official weights. Fred Webb's contract specified railroad weights.

The multistacks were shipped from Farmers Grain, Douglas, Ga. Farmers Grain provided origin SWIB weight certificates (affidavit weights) on both units. Even though Farmers Grain had a weight agreement with the railroad, the railroad also weighed the units. The difference in the weight of six cars was 96,752 pounds.

The plaintiff, Fred Webb Inc., invoiced the defendant, Goldkist Inc., on origin SWIB weights. However, the defendant made payment on railroad weights. As a result, the plaintiff claimed a balance due of \$6,599.84, plus interest.

Discussion

Since the trade was made through a broker, Grain Trade Rule 6(b) -- confirmation -- was applied to this case. Under that trade rule, since neither party notified the other party of a contract difference, the contract is to have been filled in accordance with the terms of the confirmation issued by the broker, which was first official weights.

Further, Grain Trade Rule 21 states that for grain sold basis official weights, the seller shall furnish the buyer a certificate of weight meeting qualification of Grain Trade Rule 4A(1). In the event that the seller fails to perform as required under this rule, it is the responsibility of the buyer to make settlement based upon destination weights, official or certified if possible, or the railroad track scale weight.

Concerning the SWIB weights that were furnished, the following statement was given by SWIB: "Farmers Grain was under weight agreement at the time the shipments moved; however, since this B and R Bulk Weigher Serial Number 370710 was not tested at six-month intervals as required by the weight agreement, we cannot attest to the accuracy of the weights involved in the six shipments in question."

The seller did not provide the buyer official weights in accordance with the contract. The panel does not consider the SWIB weights as properly certified weights since they did not meet the requirement of the weight agreement.

Since no destination weights were available, and lacking official or adequately certified weights, the buyer complied with Rule 21(a) by providing the seller with a weight certificate or freight bill from the railroad to document railroad track scale for final settlement.

The Decision

Therefore, the Arbitration Panel found in favor of the defendant, Goldkist Inc., and denied the plaintiff's claim.

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

THOMAS WEIDNER, chairman
The Andersons
Maumee, Ohio

DAN MILLER
Kokomo Grain Co. Inc.
Kokomo, Ind.

ROBERT OBROCK
Landmark Inc.
Columbus, Ohio