



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

August 1, 1985

Arbitration Case Number 1620

Plaintiff: Owensboro Grain Co. Inc., Owensboro, Ky.

Defendant: David G. Cline, Maceo, Ky.

Statement of the Case

Six contracts were entered into during a period from Feb. 1, 1983 through July 14, 1983, under which a total of 38,000 bushels of U.S. No. 2 yellow corn was sold by David G. Cline to Owensboro Grain Co. Inc. for delivery during September, October or November 1983, to Owensboro's mill at Owensboro, Ky., at prices ranging from \$2.68 to \$2.90 per bushel.

The following is the schedule of contracts.

<u>Date Made</u>	<u>Contract No.</u>	<u>Bushels</u>	<u>Price</u>
Feb. 1, 1983	6590	10,000	\$2.68
Feb. 24, 1983	7367	5,000	2.71
March 10, 1983	7487	5,000	2.75
March 11, 1983	7503	5,000	2.75
March 16, 1983	7541	5,000	2.80
July 14, 1983	8727	8,000	2.90

The plaintiff's contracts were signed by both parties. The defendant did not issue a contract. The defendant delivered only 1,701.63 bushels on the contracts.

On Dec. 12, the plaintiff notified the defendant by certified mail that failure to respond to the plaintiff's request for satisfaction under the contracts within five days of receipt of the letter would cause Owensboro Grain Co. Inc. to buy in the undelivered amount of corn.

The defendant took no action. So on Dec. 20, 1983, Owensboro Grain Co. Inc. established a price of \$3.56 per bushel for U.S. No. 2 yellow corn delivered to Owensboro's mill and assessed Cline the difference between this price and the various contract prices on the undelivered portion of the contracts. Owensboro Grain Co. Inc. assessed Cline a charge of \$28,132.22.

Cline refused to pay because a drought prevented him from producing enough corn to meet all of his contracted obligations. He believed this relieved him from any obligations to fulfill his contracts.

The Decision

Failure to produce a crop does not void a contract for grain delivery, since that grain is available somewhere. It may be difficult to complete the delivery. It will probably be costly to complete the delivery. But it is not impossible.

In this case, as in most cases, it is less costly to determine the fair market value and make a cash settlement rather than force the seller to actually purchase the grain somewhere and deliver it to the buyer.

Grain Trade Rule 10 states: "...If the seller fails to notify the buyer of his inability to complete his contract,...the liability of the seller shall continue, until the buyer, by the exercise of due diligence, can determine the seller has defaulted. If so, the buyer shall immediately... (c) after having given notice to the seller to complete the contract, the buyer will cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day."

The Award

Since Owensboro Grain Co. Inc. allowed five days after receipt of the letter dated Dec. 12, and the defendant, Cline, probably should have received it on Dec. 13 or 14, the date default was discovered was Dec. 19 (a Monday). Therefore, the fair market value as of Dec. 20 should be used to determine damages due to Owensboro Grain Co. Inc.

Based upon the testimony of Nedra Theiler, it appears a fair market value, on Dec. 20, 1983 was \$3.43 to \$3.45 per bushel. We used the median value of \$3.44 per bushel.

Thus, the arbitration panel awards Owensboro Grain Co. Inc. \$24,376, plus interest at 1 percent over the prime rate from Dec. 20, 1983 until the date paid.

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

Thomas Feldmann, chairman
West Central Cooperative
Ralston, Iowa

Mike Loy
Botkins Grain and Feed Co.
Botkins, Ohio

Dale Mayhew
Lansing Grain Co.
Okemos, Mich.