



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

December 5, 1985

Arbitration Case Number 1623

Plaintiff: FCX Inc., Raleigh, N.C.

Defendant: Paramount Poultry, Division of Cargill Inc., Jacksonville, Fla.

Statement of the Case

Cargill Inc. purchased 70,000 bushels of U.S. Number 2 yellow corn from FCX Inc. in October and November 1984 under four contracts negotiated through brokers.

FCX Inc. shipped 15 cars applied to the contracts, of which Cargill rejected five because of the presence of coffeeweed seed in the corn.

At that point, Cargill notified FCX that it would accept further shipments only if coffeeweed seed was limited to a maximum of 10 seeds per pound. Cargill argued that the corn was not fit for poultry feeding because of the presence of coffeeweed seed and that its contract contained a "fit for a particular purpose warranty."

FCX refused to accept this requirement of Cargill's to modify the contract to 10 seeds per pound, so the balance of the contract was canceled by Cargill. Cargill supplied FCX with a special seed analysis from the Florida Department of Agriculture and Consumer Services showing coffeeweed seed in the samples of the corn varied from two to 10 per pound.

FCX claimed damages totaling \$20,998.87 and asked for an award of 1 percent over the prime rate from date incurred.

The Decision

The arbitration panel found in favor of FCX Inc., believing that FCX made every reasonable effort to fulfill its contractual responsibilities. In the trade and in official grading, coffeeweed seed is regarded as foreign material (FM). Cargill's contract specified that "no crotalaria seed present and aflatoxins not to exceed 20 parts per billion in grain sold hereby." If other seeds were to be excluded, they should have been specified in the contracts.

While coffeeweed seed, as well as a number of other weed seeds, can be toxic to animals if the quantity is sufficiently large, from the evidence presented there was no reason why Cargill should have rejected the corn and canceled the contracts.

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The Award

FCX Inc. is awarded the claimed amount of \$20,998.87, which was documented, plus 1 percent over the prime rate from the time of notification of rejection until the award is settled.

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

Forrest W. Brush, chairman
S. M. Whitney Co. Inc.
Augusta, Ga.

John Guglielmi
Holly Farms Poultry Industries Inc.
Wilkesboro, N.C.

S. Thad Jones
Central Soya Co. Inc.
Fort Wayne, Ind.