



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

December 23, 1986

## Arbitration Case Number 1628

Plaintiff: Leo Hinson, Farmville, N.C.  
Defendant: Parker Grain Co. Inc., Farmville, N.C.

### Statement of the Case

This case involved a dispute arising from questions concerning margin requirements and time of pricing of two contracts for the sale of soybeans from the plaintiff, Leo Hinson, a farmer, to the defendant, Parker Grain Co. Inc.

On Nov. 3, 1983, Leo Hinson and Parker Grain Co. Inc. executed Parker's contract No. 1099. The contract provided for the sale of 7,839.47 bushels of U.S. No. 2 yellow soybeans. Terms of the sale stated: "Beans to be priced on or before March 20th (1984)...to be priced at 50 cents under March 1984 futures." The method of payment allowed Hinson to receive 80 percent of Parker's then-current posted price, stated contractually as: "Will advance 80 percent of money," which was done in the amount of \$51,287.23.

On Dec. 1, 1983, Hinson entered into a second contract with Parker (Parker's contract No. 259). The second contract was for the sale of 4,124.73 bushels of U.S. No. 2 yellow soybeans to be priced in the same manner on or before the same date at the same basis. Parker advanced Hinson 80 percent of the current price on that date in the amount of \$25,007.25.

Hinson was jailed on Feb. 7, 1984, leaving his wife, Barbara Hinson, with power of attorney to conduct business.

The March soybean futures contract had fallen precipitously by the week of Feb. 10, 1984. Donald Parker, acting in behalf of Parker Grain Co. Inc., contacted Barbara Hinson asking that additional margin be put up or that both contracts be priced. Barbara Hinson stated that she was unfamiliar with the soybean market and that Parker should talk with the plaintiff's brother, Billy Hinson. Parker talked with Billy Hinson, who gave him the impression that he understood the situation. After four days, Parker spoke once more with Billy Hinson and understood that he, Billy Hinson, instructed him to do whatever was necessary and to "take the beans out."

On Feb. 10, 1984, Parker priced both contracts at \$6.54½, or 50 cents below the March soybean futures contract of \$7.04½. Parker issued Leo Hinson a check in final settlement in the amount of \$127.40 (gross amount less advance and discounts). This check was never cashed.

Both Barbara Hinson and Billy Hinson denied giving permission to price the soybeans. On March 20, 1984 at 11:45 a.m., Leo Hinson issued an order to Parker Grain Co. Inc. to price Parker's contract No. 1099 and Parker's contract No. 259. At that time, the March futures contract was trading at \$7.69 per bushel, which would have resulted in a final price for the two contracts of \$7.19. Hinson then made a claim on Parker for \$9,714.23, the difference between the advance and \$7.19 per bushel, less discounts.

### The Decision

Majority Decision: In a basis contract of this nature, the buyer gives up his traditional right to price. Had the price fallen below the amount advanced, the seller would have been obligated to have refunded the excess at the time of pricing. Reciprocal margins or the seller's obligation to keep the contract margined are not trade practice unless specifically spelled out in the contract and agreed to by both buyer and seller.

The arbitration panel was unanimous in wishing to caution the trade as to the necessity of using well-thought-out contracts that clearly encompass all of the obligations of both buyer and seller to each other.

The Award: The majority of this arbitration panel awarded the plaintiff, Leo Hinson, \$7.19 per bushel (\$7.69 March soybean futures minus 50 cents per bushel basis), less the prior advance and any discounts or assessments. No interest was demanded and none was awarded.

Granville M. Tilghman, Chairman  
General Utility Co. Inc.  
Dunn, N.C.

John P. Kohr  
Co-operative Elevator Co.  
Pigeon, Mich.

Minority Decision: I found in favor of the defendant for the following reasons:

- In the written contracts, the buyer did not give up his right (Grain Trade Rule 30) to decide when to "price" unpriced grain. The contracts appear to be "basis contracts," and one would have expected that the seller would have set the time to price. However the National Association's guidelines for arbitration state that trade practice should be relied upon only when there is no applicable Trade Rule. Any deviation from the buyer's right to price should have been addressed in the written contract and not assumed because the contracts were "basis contracts."
- The question of how to handle a "margined" purchase is not covered by the contracts or Trade Rules. My perspective on trade practice is limited to interaction between terminals and country elevators. The defendant handled the situation in a manner consistent with normal trade practice based upon my perspective.

John Fletcher  
Fletcher Grain Co. Inc.  
Marshall, Mo.

### Arbitration Case Number 1628--Appeal Decision

This case involved a dispute between plaintiff-appellee, Leo Hinson (seller) and defendant-appellant, Parker Grain Company Inc. (buyer) arising from the appellant's pricing of two basis purchase soybean contracts. Both basis contracts contained the notations: "Beans to be priced on or before March 20, 1984," and "will advance 80 percent of money." The contracts were dated Nov. 3, 1983, and Dec. 1, 1983, for 7,839.47 bushels and 4,124.73 bushels, respectively, with a basis on both contracts at 50 cents per bushel under the Chicago March soybean futures price.

On Feb. 6, 1984, the contracts remained unpriced. On that date, the plaintiff-appellee, Leo Hinson (seller) executed a power of attorney naming his wife, Barbara Hinson, as attorney-in-fact. The following day, Feb. 7, 1984, the plaintiff-appellee was jailed and thereby unable to receive or originate telephone communication.

During the week of Feb. 6, 1984, Chicago March soybean futures declined, prompting the appellant, Parker Grain Co. Inc. to contact Barbara Hinson (attorney-in-fact for appellee Hinson) to request either margin money or the pricing of the two contracts. Barbara Hinson suggested that Parker contact Billy Hinson, brother of the appellee, because she was unfamiliar with the soybean market. Parker contacted Billy Hinson on two occasions (four days apart) and understood that the instructions from Billy Hinson were to do whatever was necessary to "take the beans out." Billy Hinson, in an affidavit submitted as evidence, denied having the authority to issue instructions as to the pricing of the contracts.

On Feb. 10, 1984, the appellant, Parker Grain Co., priced both soybean contracts using the then current Chicago March soybean futures of \$7.04½ per bushel resulting in a cash price of \$6.54½ (\$7.04½ minus 50 cents). Based upon 80 percent advance at the time of contracting, the balance due the appellee for both contracts was \$127.40.

The appellee never cashed the check and subsequently on March 20, 1984, issued a written order to the appellant to "sell and price" the contracts. The Chicago March soybean futures closed at \$7.98 per bushel on that date with a low of \$7.66½ and a high of \$7.98. However, the appellee, Hinson, contended that the futures were at \$7.69 per bushel at the time of delivery of the order. Therefore, the appellee-plaintiff contended that the appellant-defendant owed the difference between the cash advance and \$7.19 per bushel (\$7.69 minus 50 cents) or \$9,714.23. A total of \$76,294.48 was advanced initially.

#### Original Arbitration Decision

The original arbitration panel reached a split decision on this case.

The majority opinion found in favor of the plaintiff, Leo Hinson (seller). The decision stipulated: "In a basis contract of this nature, the buyer gives up his traditional (underscore added) right to price. Had the price fallen below the amount advanced, the seller would have been obligated to have refunded the excess at the time of pricing." The decision also stated that reciprocal margins are not trade practice unless specifically agreed to by both buyer and seller and specified in the contract.

The minority opinion, found in favor of the defendant, Parker Grain Co. Inc., reasoning that Parker (buyer) did not give up his right to price basis contracts citing application of Grain Trade Rule 30 and that the defendant, handled the issue of margin consistent with trade practice.

#### The Issue

The issue in dispute was whether the appellant-defendant, Parker Grain Co. Inc., had the right to price the two basis contracts absent adequate margin without receiving pricing instructions from the seller pursuant to the contractual language, Trade Rule application or trade custom.

Implicit in the contracts is an apparent desire on the part of the buyer (appellant-defendant Parker Grain Co. Inc.) not to have outstanding to the sel-

ler (appellee-plaintiff Hinson) an amount equal to the full value of the contracts at the time of purchase (hence, 80 percent advance versus 100 percent advance). Therefore, at the time of the trade, the appellee-plaintiff agreed to the buyer's retention of a 20 percent margin. Surely, if trade practice, absent contract language, was for the seller not to have an obligation to keep the contracts adequately margined, Hinson could have demanded, and Parker could have paid, a 100 percent advance at the time of contracting, absent other deductions for discounts, etc.

Appellee-plaintiff Hinson submitted as evidence an affidavit of a previous local office manager of a major commodity brokerage firm stating "that under current local trade practice, any agreement regarding a margin call is incorporated into the written contract between a producer and a dealer...." A sample contract was enclosed that clearly was not a typical contract between a producer and grain dealer. The contract was for rail shipment, first official weights and grades to apply, and a price basis of F.O.B. Cincinnati for shipment of one unit per week during January. The notation regarding reciprocal margin application was embodied in the boilerplate section of the contract. This would suggest that even if the sample contract was a typical contract that could have applied in this case, the fact that the reference to the application of reciprocal margins was in the boilerplate or standard-term-versus-negotiated-term section would imply such a requirement is trade practice.

The majority of the original arbitration panel apparently recognized that the custom of the trade is that the buyer has the option to price unpriced basis contracts. In its original decision, the majority opinion stated: "In a basis contract of this nature, the buyer gives up his traditional right to price." "Traditional" is the key word.

Application of Grain Trade Rule 30, absent contract specifications on pricing, was preempted by the notation on both contracts: "Beans to be priced on before March 20, 1984." Trade practice for giving the seller the right to price unpriced basis contracts is applicable to such or similar contract language.

#### Arbitration Appeals Committee Decision

The Arbitration Appeals Committee, after reviewing all the submitted evidence and after evaluating the findings and conclusions of the original arbitration panel, unanimously agreed to reverse the finding of the majority and agreed with the decision -- but not totally with the principle -- of the minority in favor of the appellant-defendant, Parker Grain Co. Inc.

The decision is predicated upon the fact that it is standard trade custom to require a seller to keep unpriced basis contracts adequately margined when the buyer relinquishes to the seller his traditional and applicable Trade Rule right to price unpriced basis contracts, such as those involved in this case.

The Award: Pursuant its decision, the Arbitration Appeals Committee agreed with the defendant-appellant's original final settlement and payment.

Submitted with consent and approval of the Arbitration Appeals Committee, whose names are listed below.

Tom Couch, Chairman  
The Early and Daniel Co. Inc.  
Cincinnati, Ohio

Frank Hemmen  
Cargill Inc.  
Channelview, Texas

Rupert Quinn  
Benson-Quinn Co.  
Minneapolis, Minn.

John McCulley  
Oakville Feed and Grain Inc.  
Oakville, Iowa

Howard Wright  
Baltic Mills Inc.  
Vincennes, Ind.