



# Arbitration Decisions

May 7, 1987

## Arbitration Case Number 1630

### Plaintiff:

Cargill Inc., New York, N.Y.

### Defendant:

Continental Grain Co., New York, N.Y.

### Statement of the Case

Cargill Inc., the plaintiff, claimed damages of \$65,033.18 against Continental Grain Co. for extraordinary discharge expenses and dockage charges resulting from Continental's tender of the barge "Wayne" in connection with the sale of 4,000 short tons of Haitian middlings on Dec. 7, 1984.

The claim was comprised of \$60,013.68 for demurrage and \$5,019.50 for dockage and line-handling charges. As a basis for the claim, Cargill cited:

- NGFA Barge Trade Rule 1(B), indicating Continental Grain Co. had tendered a tween deck barge; and
- Continental's delivery of the middlings in an incredibly caked and set-up condition that made discharge extraordinarily time-consuming and expensive.

Continental Grain Co. counterclaimed against Cargill for:

- demurrage of \$57,366.77 (voluntarily reduced by Continental from \$60,013.68); and
- \$9,072 for damages to the barge "Wayne" while under the control of Cargill.

Continental further denied Cargill's claim of \$5,019.50 for dockage and line-handling charges.

### The Decision

To resolve this case, the arbitration committee segmented the claim into three areas: 1) the

disputed demurrage; 2) the dockage and line-handling charges; and 3) the physical damage to the barge "Wayne."

- **Demurrage:** It was the panel's opinion that NGFA Barge Trade Rule 1(B) did not apply to ocean or cross-Gulf barge shipments, and Continental Grain had every right to apply the barge "Wayne" to the contract. Further it should be noted the barge "Wayne" was not listed as a tween decker by the American Bureau of Shipping.

Settlement of the quality issue was at loading port per the contract, "origin inspection to govern per SGS certificates." An analysis of the Haitian middlings was provided by SGS Control Services, dated Dec. 26, 1984, which found the cargo odor-free and in sound condition. The contract specified that Cargill could reject the cargo if it did not arrive in a cool and sweet condition. Since Cargill at no time indicated that the quality of the cargo did not meet contract specifications, there are no Trade Rules that support Cargill's demurrage claim with respect to cargo quality.

The committee, therefore, denied Cargill's demurrage claim of \$60,013.68, and awarded Continental Grain Co. its adjusted claim amounting to \$57,366.77.

- **Dockage and Line-Handling Charges:** There was no mention of this issue in the contract on file, and no tariffs provided to state-approved charges. Therefore, Cargill's claims for line-handling and dockage

were not applicable and were denied by the arbitration committee.

- **Physical Damage to the Barge:** Continental's claim for damages to the barge "Wayne" were filed after the fact. If Continental Grain Co. believed there were damages to the barge, Continental should have put Cargill Inc. on official notice to allow for a survey or an agreement prior to the repairs as to the extent and cost. Since Continental Grain Co. did not follow normal procedures, its damage claim for \$9,072 for repairs to the barge "Wayne" was denied by the arbitration committee.

Based upon the above decision in total, the arbitration committee directed Cargill Inc. to pay Continental Grain Co. \$57,366.67 in settlement of the arbitration case.

Submitted with the consent and concurrence of the arbitration committee, whose names are listed below:

**Russell J. Bragg**  
The Pillsbury Co.  
Minneapolis, Minn.

**Gerald Krueger**  
Louis Dreyfus Corp.  
Overland Park, Kan.

**Wayne Sandberg**  
ADM Milling Co.  
Shawnee Mission, Kan.

## **Arbitration Appeals Case Number 1630**

**Plaintiff/Appellant: Cargill Inc., New York, N.Y.**

**Defendant/Appellee: Continental Grain Co., New York, N.Y.**

The Arbitration Appeals Committee, after reviewing all written evidence in Arbitration Case Number 1630 and reviewing the findings and conclusion of the original arbitration committee, unanimously agreed to uphold the

original arbitration committee's findings.

Submitted with the consent and approval of the Arbitration Appeals Panel, whose names are listed below:

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

**Charles Holmquist**  
Holmquist Elevator  
Omaha, Neb.

**John McCulley**  
Oakville Feed and Grain Inc.  
Oakville, Iowa

**Richard McWard**  
Bunge Corp.  
St. Louis, Mo.

**Howard Wright**  
Baltic Mills  
Vincennes, Ind.