



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

January 29, 1987

Arbitration Case Number 1632

Plaintiff: The Early and Daniel Co. Inc., Cincinnati, Ohio
Defendant: Louis Dreyfus Corp., Stamford, Conn.

Statement of the Case

In September 1985, The Early and Daniel Co. (seller) and Louis Dreyfus Corp. (buyer) entered into three contracts for barge shipment of corn C.I.F. NOLA during November/December 1985.

On Dec. 2, 1985, The Early and Daniel Co. telephoned Louis Dreyfus Corp. at 11:57:50 a.m. (EST) to apply six last day barges, stating to the operator who answered that it had "last day barges" to apply and asked to speak to the person in charge of barge application.

The operator put the call on "hold" for approximately two minutes before the applications clerk answered. When the clerk answered, she stated that the time was now past noon and Louis Dreyfus Corp. would not take the application of the six barges.

In subsequent telephone conversations, Louis Dreyfus Corp. maintained its position that The Early and Daniel Co. did not reach the applications clerk by noon (EST), and it would not accept applications past noon.

The Early and Daniel Co. was left with six non-applicable barges that had lost significant value. In the St. Louis call session of Dec. 3, 1985, The Early and Daniel Co. bought in 100,000 bushels of corn C.I.F. NOLA. Subsequently, it sold the six barges (totaling 321,000 bushels) at a market differential of 7.5 cents per bushel. The Early and Daniel Co. claimed breach of contract and requested damages of \$24,087.60 to cover its losses.

The defendant, Louis Dreyfus Corp., did not dispute the time that The Early and Daniel Co. claimed to have reached Louis Dreyfus Corp. Rather it claimed that applications could only be made to the barge clerk, who was reached at approximately noon. Therefore, Louis Dreyfus Corp. maintained there was no breach of contract. Further, Louis Dreyfus Corp. claimed that if there had been a breach of contract, The Early and Daniel Co. should not have bought in barges and applied them to the open contracts. Rather, Louis Dreyfus Corp. said The Early and Daniel Co. simply should have cancelled the contracts which, because of the difference in the flat price of the contracts and the market, would have resulted in a profit to The Early and Daniel Co. of \$47,104.64. By subsequently applying barges to the contracts, Louis Dreyfus Corp. maintained this action affirmed its vitality and there was no breach of contract.

The Decision

The arbitration panel discovered there were two issues with which to deal. First, did Louis Dreyfus Corp. breach the contract, and, second, was The Early and Daniel Co. damaged, and if so, by what amount?

Concerning the first issue, the panel found that Louis Dreyfus Corp. did breach the contract by placing The Early and Daniel Co.'s call on "hold" for two minutes, thereby preventing the application of the six barges.

The second issue was more difficult to resolve. Perhaps the more strict interpretation of the Uniform Commercial Code would have called for cancelling the contracts. But the arbitration panel believed that the purpose of the arbitration process is to apply the thought processes of reasonable men having knowledge of the grain business.

The Early and Daniel Co. was well prepared to know the correct time because it set its clocks by U.S. Naval Observatory time daily. Proving it on Dec. 2, 1985, when Louis Dreyfus Corp. disagreed, was another matter.

The panel believed The Early and Daniel Co. tried to mitigate damages when it sold the non-applicable barges, bought in and applied to the still open contracts. The Early and Daniel Co., on Dec. 19, 1985, obtained from the telephone company a record of the call to Louis Dreyfus Corp. at 11:57:50, which substantiated its position. But, on Dec. 3, the company did not know this evidence was available and it was in possession of six barges that probably were deteriorating in value.

Since Louis Dreyfus Corp. refused to accept the barges or agree that there had been a breach of contract, the panel found that The Early and Daniel Co. followed the most reasonable course of action by replacing the barges and fulfilling the contract. Damages were indeed mitigated as according to Louis Dreyfus Corp.; The Early and Daniel Co. could have gained and Louis Dreyfus Corp. could have lost \$47,104.64 as a result of The Early and Daniel Co.'s cancelling the contracts.

The Award

The Early and Daniel Co. is awarded \$24,087.60 plus interest at 1 percent over the prime rate from Dec. 3, 1985 until date of payment.

Submitted with the consent and approval of the arbitration panel, whose names appear below.

Gregory C. Muench, chairman	Paul L. Krug	Mike Walter
Archer Daniels Midland Co.	Continental Grain Co.	General Mills Inc.
Decatur, Ill.	Chicago, Ill.	Minneapolis, Minn.

Arbitration Case Number 1632

Decision of the Arbitration Appeals Committee

Appellant: Louis Dreyfus Corp., Stamford, Conn.
Appellee: The Early and Daniel Co. Inc., Cincinnati, Ohio

The Arbitration Appeals Committee, after individually reviewing all written evidence submitted concerning Arbitration Case Number 1632, as well as the findings and conclusions of the original arbitration panel, unanimously agreed with the findings of the original arbitration panel.

Richard A. McWard, chairman	Charles Holmquist	Rupert G. Quinn
Bunge Corp.	Holmquist Elevator Co.	Benson-Quinn Co.
St. Louis, Mo.	Omaha, Neb.	Minneapolis, Minn.
Robert Peyton	Clayton Johnson	
Peavey Co.	Mid-States Terminals Inc.	
Minneapolis, Minn.	Toledo, Ohio	