



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

June 9, 1988

## Arbitration Case Number 1637

**Plaintiff: Dixie Portland Flour Mills Inc., Memphis, Tenn.**

**Defendant: Guthrie Cotton Oil Co., Guthrie, Okla.**

### Statement of the Case

The plaintiff, Dixie Portland Flour Mills Inc., bought one bargeload (45,000 bushels) of hard red winter wheat from the defendant, Guthrie Cotton Oil Co., on June 13, 1986. Barge No. ING 1245 was applied by telephone at the time of the trade as U.S. No. 1 hard red winter wheat loaded at Wagoner, Okla., on June 13, 1986.

The confirmation of the plaintiff, defendant and broker all called for either first official or loading official grades to govern. The plaintiff's confirmation, signed by the defendant, stated: "Not subject to condemnation and seizure by the Food and Drug Administration at time of delivery."

The defendant presented a draft for \$122,000 accompanied by the original bill of lading and official inspection certificate No. EN-016540 to the plaintiff on June 17, 1986. The plaintiff paid this draft the same day without protest.

The bargeload of wheat arrived at Chattanooga, Tenn., on July 11, 1986 and was graded as U.S. No. 2 hard red winter wheat, with official inspection certificate No. CN-13491 issued accordingly. However, when the plaintiff began unloading the barge on July 16, 1986, it discovered a significant quantity of heating and moldy wheat in the bottom of the barge. The plaintiff notified the defendant of its rejection of the barge that same day by telephone and followed by confirmation via a letter to the defendant. The defendant rejected this assertion by plaintiff in a telex on July 24, 1986.

The plaintiff requested a reexamination of the barge contents by the local FGIS agency and a federal appeal of its findings. This appeal inspection found approximately 19,500 bushels were U.S. No. 2 hard red winter wheat and approximately 19,500 bushels were U.S. sample grade hard red winter wheat, 70.7 percent damage, heating and musty.

The plaintiff also had FDA sample the barge on July 25, 1986. FDA reported that although the sample was found to be up to 26.2 percent moldy wheat, it had no

established action level on moldy wheat and would not issue a written opinion on the barge.

The plaintiff submitted a claim for: 1) return of the \$122,000 advanced plus interest; 2) \$9,850 in demurrage accrued; and 3) switching, unloading, storage and other incidental costs in undetermined amounts. The defendant submitted a claim for the balance due of 5 percent plus interest.

### The Decision

All parties involved in this dispute agreed that the governing inspection was to be either loading official or origin official. All parties also agreed that the defendant presented a valid official inspection certificate issued on a probe sample taken at the point of loading.

The plaintiff, however, contended that the wheat's condition at the unloading point indicated that the barge was sampled incorrectly at origin. While the arbitration panel acknowledged that errors can, and do, occur in the sampling and grading of grain, it was beyond the charge of this panel to attempt to pass judgment on the quality of an official inspection certificate. The panel believed that the plaintiff's concerns regarding sampling and inspection procedures should be addressed by the FGIS Compliance Division. Thus, the arbitration panel found that the defendant complied with the contract terms by presenting a valid official inspection certificate.

The plaintiff also contended that, although the wheat was not condemned by FDA, to have taken it into its elevator would have been an unacceptable risk of future FDA action. Again, while the panel acknowledged the risk of future condemnation, the contract between the parties referred specifically to FDA condemnation or seizure at the time of delivery. Since the wheat was not seized by FDA at the time of delivery, the panel had no choice but to deny the plaintiff's argument on this count.

The arbitration panel wished to emphasize that the contract terms themselves may be a partial cause of this dispute. It is the obligation of both buyer and seller to

make certain the contract terms accurately reflect their intentions, especially when the grain is intended for further processing. In this case, the inclusion of terms such as "milling quality at arrival" or "guaranteed cool and sweet on arrival" may have done more to resolve the dispute than anything this panel could do after the fact.

Therefore, the panel unanimously found in favor of the defendant, Guthrie Cotton Oil Co., and directed the plaintiff to pay the defendant the balance 5 percent of the price due plus interest at 7.5 percent from August 15, 1986 until time of payment.

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

**J. Stephen Lucas**, *chairman*  
Louis Dreyfus, Corp.  
Stamford, Conn.

**R. Ed Coyle**  
General Mills Inc.  
Minneapolis, Minn.

**William Schieber**  
Garnac Grain Co. Inc.  
Kansas City, Mo.

## **Arbitration Appeals Case Number 1637**

**Appellant: Dixie Portland Flour Mills, Memphis, Tenn.**

**Appellee: Guthrie Cotton Oil Co., Guthrie, Okla.**

The Arbitration Appeals Committee individually reviewed all written evidence submitted in Arbitration Case Number 1637 and reviewed the findings and conclusions of the original arbitration panel. In addition, an oral hearing was conducted on Jan. 6, 1988, and the entire Arbitration Appeals Committee heard the opening statement of the appellant, the argument of the appellee and the rebuttal of the appellant. The committee also questioned both the appellant and the appellee.

The Arbitration Appeals Committee unahimously affirmed the decision of the original arbitration panel which awarded the appellee, Guthrie Cotton Oil Co., 5 percent of the price due plus interest at 7.5 percent from August 15, 1986 until time of payment.

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

**John McClenathan**, *chairman*  
GROWMARK Inc.  
Bloomington, Ill.

**Thomas Feldmann**  
West Central Cooperative  
Ralston, Iowa

**Paul Krug**  
Continental Grain Co.  
Chicago, Ill.

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

**Patrick M. Williams**  
Great River Grain Corp.  
St. Joseph, La.