



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

May 5, 1988

Arbitration Case Number 1638

Plaintiff: Harvey Farmers Elevator, Harvey, N.D.

Defendent: Knight Seed Co., Burnsville, Minn.

Statement of the Case

On Feb. 25, 1986, Harvey Farmers Elevator and the Knight Seed Co. entered into a contract involving 14 hopper cars of oil sunflower seeds.

The cars were traded F.O.B. Harvey's shipping point. Time of shipment was October through December 1986 via rail or truck on buyer's conveyance. Quality minimum and maximums were agreed upon contractually as follows: 26 pounds or better; 7 percent maximum insect; free of all other grains (maximum 1 percent tolerable); 11 percent maximum moisture; cool and sweet; 7 percent dockage; field run. Each car was to be probed independently for state grade at origin.

Again on Feb. 28, 1986, another contract was written for five cars with the same specifications as the first contract.

The cars involved in the dispute — namely, MILW 101600 and SOO 70459 — were loaded on Oct. 30, 1986 and inspected by Minot (N.D.) Grain Inspection Inc. An official grade certificate (white) was issued on both cars showing a grade of No. 1 sunflower seed. The cars were billed out on Oct. 31, 1986 for Knight's account to Arcade, N.Y.

On or about Nov. 12, 1986, Knight Seed Co. telephoned Harvey Farmers Elevator to inform it that the cars were being rejected because their contents were out of condition (i.e., wet, hot, molding and crusted) upon reaching destination. The cars were inspected by the railroad on a freight inspection report.

The end user at Arcade, N.Y., sent a sample of each compartment from the two cars to the Federal Grain Inspection Service office in Philadelphia, Pa. The FGIS inspection report showed that only one compartment of one car had odor and the moisture still was less than 11 percent.

Knight Seed Co. then disposed of the contents of the cars by having them trucked to Superior, Wis. Knight Seed Co. made payment of \$290.85 to settle out the cars.

As compensation in this dispute, Harvey Farmers Elevator sought the original invoice amount of \$14,590.55, less the \$290.85 car settlement — totaling \$14,299.70 — plus interest at 13 percent from Nov. 21, 1986.

The Decision

The arbitration panel decided that this dispute was governed by the Grain Trade Rules instead of the Feed Trade Rules, since sunflowers are defined as grain under the U.S. Grain Standards Act (P.L. 94-587, as amended).

Under Grain Trade Rule 16 — "Condition Guaranteed on Arrival" — the phrase "cool and sweet on arrival" must be part of the contract for rejection at destination. The contract between the two parties in this case states only that the sunflower seeds be "cool and sweet," with no statement of "on arrival."

These cars also were bought on origin official grades, provided by Harvey Farmers Elevator. Furthermore, they were bought F.O.B. truck or rail, buyer's option.

The grades used at destination were not officially sampled. Rail car No. MILW 101600 showed no significant increase in moisture and no indication of odor. Further, two of three compartments of rail car No. SOO 70459 exhibited no odor and all three compartments were less than 11 percent moisture.

Also, the destination grade was performed nine days after the cars arrived and the railroad reports showed seals and gaskets were missing on the cars.

In view of these facts, we do not believe Knight Seed Co. has any recourse.

The Award

It is the decision of this arbitration panel that Harvey Farmers Elevator be awarded the following:

MILW No. 101600.....	\$ 7,748.39
SOO No. 70459.....	7,041.60
Less Dead Freight.....	— 199.44
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Subtotal.....	\$14,590.55
Less Knight's Payment.....	— 290.85
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Total Award.....	\$14,299.70

Further, the arbitration panel decided no interest be awarded because of the inadequate handling of the situation by both parties; there was no cooperation between them in reducing the dispute to the lowest cost factor.

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

Michael Donnelly, chairman
R.F. Cunningham and Co. Inc.
Melville, N.Y.

Wayne Longtin
Farmers Cooperative Association
Mahnomon, Minn.

Jack Sharpe
Sunshine Feed and Grain Inc.
Buffalo, N.Y.