



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

August 9, 1988

Arbitration Case Number 1645

Plaintiff: Indiana Grain Division of Indiana Farm Bureau Cooperatives Assn. Inc., Indianapolis, Ind.

Defendant: J & S Farms Inc., Gainesville, Ga.

Statement of the Case

In August 1985, J & S Farms Inc., purchased from Indiana Grain Division of Indiana Farm Bureau Cooperative Association Inc., 5,400 bushels of U.S. No. 2 yellow corn, delivered to Gainesville, Ga., for \$2.735 per bushel. Confirmation issued by Blue Ridge Grain and Brokerage Inc., established the existence of the trade.

The dispute centered around four delivery tickets for four truckloads of corn delivered to J & S Farms Inc. by Nobles Feed Seed and:

- whether a voucher accompanied the tickets; and
- the fact that J & S Farms Inc. paid Nobles Feed Seed directly for the corn, claiming it thought Indiana Grain wanted payment to be made directly to Nobles Feed Seed.

The Decision

The arbitration panel found unanimously in favor of Indiana Grain. It was difficult for the panel to believe that a voucher from Indiana Grain was not sent with the delivery tickets, as their vouchers have the name and address which are displayed through a window envelope. Also, three of the four tickets had Indiana Grain's name referenced on the tickets. Further, the price which Nobles Feed Seed showed on the tickets was different than the contract price J & S Farms Inc. had with Indiana Grain.

Indiana Grain had open contracts with J & S Farms Inc. at the time of the shipment. It is not an industry practice for a buyer to bypass the party that sold it grain so as to pay a third firm that was in line as a supplier. J & S Farms Inc. did not provide any evidence of having open contracts with Nobles Feed Seed at the time of shipment of the corn. A phone call by J & S Farms Inc. to either Indiana Grain or to Nobles Feed Seed probably would have prevented payment being made to the wrong party.

Both Indiana Grain and J & S Farms Inc. improperly withheld funds from the other party in an attempt at self-help remedies. Each of them benefited from the daily value of these funds. Therefore, no interest is awarded, and Indiana Grain should be paid the money it is owed for the corn as contracted.

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

Forrest W. Brush, Chairman
S.M. Whitney Co., Inc.
Augusta, Ga.

Robert "Ed" Coyle
General Mills Inc.
Minneapolis, Minn.

Craig Huss
ADM/Growmark
St. Louis, Mo.