



# Arbitration Decision

National Grain and Feed Association

January 11, 1990

## Arbitration Case Number 1649 (and 1649-I)

**Plaintiff:** White Cloud Grain Co. Inc., Hiawatha, Kan.

**Defendant:** Zennoh Grain Corp., Metairie, La.

**Cross-Plaintiff:** Zennoh Grain Corp., Metairie, La.

**Cross-Defendant:** Continental Grain Co., New York, N.Y.

### Statement of the Case

On July 9, 1989, White Cloud Grain Co. Inc. loaded barge "Billy 203" with yellow soybeans billed at 2,820,000 pounds. The barge was applied to Zennoh Grain Corp., which subsequently applied the barge to the Continental Grain Co. Continental Grain Co. unloaded the barge on July 26, 1987 with a certified official Federal Grain Inspection Service weight of 2,682,710 pounds.

The trade rule that applied to this dispute is NGFA Barge Trade Rule 2(g)(1), which states: *"When the trade is based on destination weights, the unloading buyer shall notify the original shipper of the final unload weights by telephone or telex within two (2) business days of unload, confirmed by mailing the original weight certificate to the shipper within five (5) business days of unload, accompanied by a statement covering the cost of weighing charges, if applicable. The original shipper is then to make final settlement with the original weight certificate, or duplicate copy thereof, and all intermediate parties shall make final settlement with the original weight certificate or a duplicate copy thereof. All invoices are due and payable within five (5) business days. (This is not an extension of credit but only the normal time to clear paperwork involved and the time can be changed by the contract.)"*

It cannot be confirmed if Continental Grain Co. did or did not report the unload weight via telephone within the time requirements of NGFA Barge Trade Rule 2(g)(1). Continental Grain Co. did mail the weight certificate to White Cloud Grain Co. Inc., as required under Barge Trade Rule 2(g)(1). FGIS did not include a statement on the weight certificate indicating all grain was emptied from the barge.

As damages in the case, White Cloud Grain Co. Inc. claimed the value of the weight difference in estimated loaded weight and FGIS-certified unload weight, plus interest.

### The Decision

The arbitration committee unanimously found in favor of Continental Grain Co.

There are three items to be addressed in this case: 1) Reporting the weight via telephone; 2) The mailing of the weight certificate pursuant to NGFA Barge Trade Rule 2(g)(1); and 3) Including on the weight certificate a statement that all cargo in the barge was unloaded.

The reporting of unload weights via telephone is stipulated to allow the shipper an opportunity to check on a barge that has an excessive shortage. No evidence was presented in this case to substantiate the estimated weight at loading. The unloading elevator investigated the unloading documents extensively and found no discrepancies. With the evidence presented, no damages were demonstrated. The NGFA's Trade Rules cannot be used to penalize one party without a show of damage. Further, the weight certificate was mailed within the number of days required by Barge Trade Rule 2(g)(1).

The statements on the weight certificate must be furnished by FGIS. The NGFA Trade Rules have no authority over FGIS; however, as required under the FGIS weighing handbook, FGIS must note on a weight certificate if any cargo is left in the carrier. The FGIS backup documents verified no grain was left in this barge and therefore no damage was realized by the shipper.

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

**William L. Schieber, *Chairman***  
Garnac Grain Co. Inc.  
Overland Park, Kan.

**James B. Buchanan**  
Illinois Cereal Mills Inc.  
Paris, Ill.

**Paul C. Hughes**  
Farmers Soybean Corp.  
Blytheville, Ark.

## **Arbitration Appeals Case Number 1649 (and 1649-I)**

**Appellant: White Cloud Grain Co. Inc., Hiawatha, Kan.**

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

The Arbitration Appeals Panel, individually and collectively, reviewed all evidence submitted in Arbitration Case Number 1649 and 1649I. It also reviewed the finding and conclusion of the original arbitration committee.

The Arbitration Appeals Panel unanimously affirmed the decision of the arbitration committee in favor of the appellee. The original decision addressed all the points that were at issue in this case.

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

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

**L. Scott Hackett**  
General Mills Inc.  
Minneapolis, Minn.

**Robert Obrock**  
Mid-States Terminals Inc.  
Toledo, Ohio

**John L. McClenathan**  
Growmark Inc.  
Bloomington, Ill.

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