



Arbitration Decision

National Grain and Feed Association

December 28, 1989

Arbitration Case Number 1657

**Plaintiff: The Heiman Co.,
McCormick Grain Co., Wichita, Kan.**

Defendant: Hall Grain Co., Akron, Colo.

Statement of the Case

This dispute involved several different, but related, issues.

The plaintiff, McCormick Grain Co., sold 2 million pounds of U.S. No. 2 yellow sorghum to the defendant, Hall Grain Co., through Dave Pitts, DBA Eastern Colorado Grain Co. The plaintiff delivered only 981,499 pounds of sorghum against this contract because it said the defendant would not provide reimbursement within a reasonable time frame.

Hall Grain Co. withheld payment to the plaintiff of \$11,840.32 owed under this sorghum contract. The payment was withheld because Hall Grain Co. perceived Dave Pitts to be an agent of the plaintiff. Hall Grain Co. had contracted to haul corn for Dave Pitts and had invoiced Eastern Colorado Grain Co. for the expense of \$12,470.43 to haul the corn from the origin to the destination of Lamar, Colo., at which point the plaintiff had the corn purchased from Eastern Colorado Grain Co.

The third issue involved in this dispute concerned the sale of millet by the plaintiff to the defendant. The plaintiff's contract indicated "millet" was sold to the defendant, whereas the defendant indicated it purchased "white proso millet." The defendant indicated

it did not receive nor sign the plaintiff's millet contract, nor did the defendant issue a contract of its own with respect to this purchase. The inspection certificate on this load of millet indicated that the grade designation was "German millet." The market for German millet at that time was \$2.25 per hundred-weight less than white proso millet.

The Decision

The arbitration committee found and concluded the following:

- The central issue concerning this case was whether Dave Pitts, DBA Eastern Colorado Grain Co., was acting as an agent for the plaintiff during this series of transactions.

The arbitrators found that Pitts acted as a broker in the sorghum and millet transactions and as a commission merchant regarding the corn trade.

- Regarding the sorghum trade, the arbitrators awarded \$11,840.32, plus interest at 10 percent from Dec. 2, 1987 to the plaintiff, McCormick Grain Co. The defendant, Hall Grain Co., was denied its claim of \$1,018.50 for the contract underfill. Hall Grain Co.'s claim that it withheld payment to the plaintiff to force Eastern Colorado Grain Co. to

pay the corn hauling bill was not justified. Hall Grain Co. acted to cover the contract underfill when McCormick Grain Co. declined to deliver the balance of the contract, but the arbitrators decided this was an arbitrary act on Hall's part. In the absence of a claim by McCormick Grain Co. for damages, it must be assumed neither party suffered serious financial harm. Therefore, the unfilled balance of this sorghum contract would be considered null and void.

- Verbal purchases of spot loads of specialty crops, such as millet, are not unusual. Along with those practices comes the resulting misunderstandings. It was the arbitrators' belief that in the normal course of business a grade or classification discrepancy would be discussed by both parties prior to unloading the grain and that both parties would agree to the price discount, in this instance \$2.25 per hundredweight. Therefore, McCormick Grain Co.'s claim for \$1,025.73 was denied.
- Regarding the defendant's claim that the plaintiff owed \$12,470.34 for freight on hauling corn, no evidence was presented that an agency relationship existed between Dave Pitts and McCormick Grain Co. Therefore, Hall Grain Co.'s claim for \$12,470.34 was denied.

As part of this case, Hall Grain Co. filed a claim seeking reimbursement for attorney fees. Both parties were aware of the arbitration procedure of the National Grain and Feed Association. Both the plaintiff and defendant signed or exchanged contract confirmations indicating the NGFA's Grain Trade Rules would apply.

McCormick Grain Co.'s action in filing a civil suit rather than utilizing the arbitration system caused the defendant certain unnecessary legal expenses. For this reason, the arbitrators awarded Hall Grain Co. 50 percent of the legal expenses it incurred, equivalent to \$1,729.62.

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

D. Michael Landers, chairman
Garvey Elevators Inc., Hutchinson, Kan.

Dale C. Seyler
Colorado Commodities, Greeley, Colo.

R. A. True
Mueller Grain Co., Goodland, Kan.