Arbitration Decision

January 18, 1990

Arbitration Case Number 1659

Plaintiff: Atwood-Larson Co., Minneapolis, Minn.

Defendant: Westside Grain Co., Madera, Calif.

Statement of the Case

On or about March 29, 1988, the two principals entered into a transaction whereby the plaintiff agreed to supply the defendant with barley. The quantities were referred to as "52 hopper cars, about 195,000 bushels" in the plaintiff's contract and as "52 hopper cars, about 4,700 tons" in the defendant's contract. The price agreed to was $2.922 per bushel delivered to various California points. The shipping period was the last week of April 1988 through the first week of May 1988.

On or about May 17, the contract was amended to state a July 1988 shipment period, with any increase in freight to be split between the two parties.

On July 1, 1988 the Burlington Northern Railroad revised its tariff from hundredweight to per-car rates. On July 29, 1988 the plaintiff shipped 4,705.47 tons (196,061 bushels) of barley in 52 hopper cars. It appeared that the plaintiff and defendant agreed that the rates with RCCR applied were $1.93/per hundredweight in the original tariff and $3,495 per car in the revised tariff.

The Claim

The plaintiff claimed $336 in freight allowances per the tariff were due on a car that should have been shipped at 90 percent of tariff because it was less than 4,650 cubic-foot capacity. In addition, the plaintiff claimed $6,117.11 was owed because of a dispute in the contract price caused by an increase in freight rates based upon the tariff in effect at the time of the original sale, which called for a minimum of 1,700 hundredweight per car.

The plaintiff maintained that NGFA Grain Trade Rule 12 did not apply to barley. Instead, the plaintiff asserted that Grain Trade Rule 23 applied. The defendant held a contrary position as to which rule applied.

The relevant sections of the two Grain Trade Rules are reprinted as follows:

*'— **Grain Trade Rule 12. Overfill and Underfill Grain on Bushel Contracts:** (a) **Mean Quantity:** On bushel contracts written "about" bushels, the bushel reference whether preceded by the word "about" or not shall become the mean quantity for purposes of establishing tolerances....*

*(c) **Rail:** In the absence of a clearly stipulated applicable tolerance in the confirmation of the quantity traded, it shall be understood that any underfill or overfill on rail grain shall be settled at the market value at the close of the first business day following the date of load or unload whichever weight is applicable of the last car in fulfillment of the contract.*

*'1. **Market value:** In the case of rail overfills and underfills, "market value" shall mean the basis at the close of the first business day of the following date of load or unload, whichever*

weight is applicable and the flat price shall be established at the time the overfill or underfill becomes known by both parties to the contract. Overfills and underfills shall be settled on a basis over or under the futures month currently used for the majority of cash trades. To convert the basis the day after the last load or unload to a basis relative to the futures month currently used for the majority of cash trades, the futures spread of the day after last load or unload shall be used.

'2. ***Tolerance for Rail Shipments:*** *On bushel contracts it shall be understood that a tolerance of 2 percent or 500 bushels, whichever is less, shall apply at contract price. A total tolerance of 5 percent more or less than the mean quantity up to a maximum of 15,000 bushels shall be permissible in the fulfillment of the contract, but if the total tolerance is in excess of 2 percent more or less than the mean quantity the full tolerance shall be settled at the market value as described herein.*

'When bushel contracts are written for more than one multi-car shipment, each multi-car shipment must be within 2 percent or 500 bushels, whichever is less, of a quantity established by dividing the total bushels by the number of shipments. The overfill or underfill on each multi-car shipment shall be settled if over the tolerance.'

*' — **Grain Trade Rule 23. Loading Minimum:** It shall be the duty of the seller to load cars in accordance with applicable tariff rules in effect on date of shipment, and to assume any loss resulting from noncompliance with such rules. In the event the minimum weight prescribed by applicable tariff is increased between date of sale and date of shipment, the seller shall deliver the minimum weight in effect on date of shipment, and any overage from the original contract to be invoiced at market price on that date.'*

The Decision

Subsequent to the initiation of this arbitration proceeding, the defendant acknowledged and paid the plaintiff's outstanding invoice for $336.

The arbitration committee agreed with the defendant's position that Grain Trade Rule 12 was applicable to this dispute. The plaintiff intended to ship a minimum of 195,000 bushels, or 4,680 tons, pursuant to its own contract confirmation. The shipment of 4,705.47 tons clearly was within the tolerance.

Based upon the actual shipment per car, there was no increase in freight rates as it would compute to $1.931/per hundredweight. The tariff minimum of 170,000 per car in the original tariff, as a factor in this transaction, clearly was set aside by the terms of the contracts of the two parties and their intent. No monetary award was made in this arbitration case.

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

Gary Mills, *Chairman*
Cargill Inc.
Minneapolis, Minn.

Nick Folland
Scoular Grain Co.
Fresno, Calif.

Rich Hardy
Gwinner Farmers Elevator Co.
Gwinner, N.D.