



Arbitration Decision

National Grain and Feed Association

November 1, 1990

Arbitration Case Number 1665

Plaintiff: Rickel Inc., Kansas City, Mo.

Defendant: Agra Grain Corp., Cedar Rapids, Iowa

Statement of the Case

On May 31, 1988, the plaintiff, Rickel Inc., purchased 528,765.85 bushels of corn from the Commodity Credit Corporation, in-store at the elevator of the defendant, Agra Grain Corp., Cedar Rapids, Iowa.

On June 9, 1988, Rickel Inc. sent Agra Grain Corp. a written shipping agreement that specified that Rickel Inc. would pay a 10-cent-per-bushel load-out rate upon completion of shipment, and a 10-cent-per-bushel storage charge from the release date of June 21, 1988. The shipping agreement further stated that the corn shipped would be minimum 52-pound test weight and maximum 15.5 percent moisture. It further stated that market scale discounts, at time of shipment, would apply.

On Jan. 20, 1989, Rickel Inc. offered in writing to modify the original shipping agreement, and Agra Grain Corp. confirmed that no less than U.S. No. 5 yellow corn would be shipped in 30 days to the Hubinger Co. in Keokuk, Iowa, and that Hubinger Co.'s market scale of discounts would apply. This agreement stipulated that 20 cents per bushel be paid for load-out and storage upon completion of the shipping contract. Any freight adjustment would be for the account of Agra Grain Corp. basis a F.O.B. point 1.5 miles west of the intersection of U.S. highways 30 and 218, the agreement stated.

On Jan. 23, 1989, Agra Grain Corp. began loading Rickel Inc.'s corn for delivery to Hubinger Co. at Keokuk, Iowa. During the next 26 days, some of the corn loaded by Agra Grain Corp. for Rickel Inc. was sample grade but was dumped by Hubinger Co. and apparently was applied to Rickel Inc.'s contract at Hubinger Co.'s scale of

discounts. Both parties, Rickel Inc. as the buyer and Agra Grain Corp. as the storing warehouseman, appeared to be performing in accordance with the shipping agreement until mid-February 1989. Rickel Inc. then notified Agra Grain Corp. that the sample grade corn dumped was subject to a higher discount scale than Hubinger Co.'s scale of discounts. Also, during this period, Agra Grain Corp. requested payment for loading grain out on a previous Rickel Inc. purchase and the weights and grades on shipments for this purchase.

At this point, relations between the third-party buyer and storing warehouseman deteriorated, each finding fault with the other's conduct, correspondence and contract interpretations. Ultimately, Rickel Inc. filed for arbitration, claiming damages of \$31,108.94 against Agra Grain Corp. Agra Grain Corp. responded by filing a counterclaim seeking \$26,438.29 against Rickel Inc.

The claim, settlement and counterclaim amounts are detailed on the following page in Table 1.

As evidenced by this table of Rickel Inc.'s settlement/claim and Agra Grain Corp.'s settlement, both parties agreed that 520,862.50 bushels were loaded-out and 20 cents per bushel (amounting to \$104,172.50) was due Agra Grain Corp. for loading and storing the grain.

Rickel Inc. asserted that the sample grade corn delivered was subject to a higher discount schedule, resulting in total discounts of \$48,751.78. Agra Grain Corp. argued that the applicable scale of discounts was Hubinger Co.'s, which would result in discounts of \$35,737.19.

Table 1

	Rickel Inc.'s Settlement and Claim	Agra Grain Corp.'s Settlement	Agra Grain Corp.'s Counterclaim
Contract Bushels (528,765.28 bushels)			
Load-out and Storage Charges (520,862.50 bushels at 20 cents per bushel)	\$104,172.50	\$104,172.50	--
Discounts on Corn Loaded Out	(\$48,751.78)	(\$35,737.19)	--
Subtotal	\$55,420.72	\$68,435.31	--
Advance Payment by Rickel Inc. (April 28, 1989)	(\$57,176.04) (*1)	(\$57,176.04) (*2)	--
Subtotal	(\$1,755.32)	\$11,259.27 (*3)	--
Contract Freight Differential (at 5 cents per bushel on 528,765.20 bushels)	--	--	\$26,438.29
Underfill [8,118.36 bushels at \$2.55 per bushel; (214.98 bu. on previous cont.)]	(\$20,701.82)	(\$20,701.82)	--
Carrying Charges	(\$7,270.84)	--	--
Other Payments Previously Made			
Wired by Agra Grain Corp. Final Settlement Date June 8, 1989	--	\$6,733.15	--
Trucking Paid by Agra Grain Corp. Date Various	--	\$2,109.70	--
Interest Calculations Accrued at 11.75 percent (on footnote amt.) from...			
*1 — 74 days [April 28, 1989 (advance payment) to July 11, 1989 (date calculation made)] (\$1,830.96)	--	--	--
*2 — 118 days [Jan. 11, 1989 (storage stop date) thru April 28, 1989 (advance payment)]	--	--	\$ 2,171.91
*3 — 159 days [Jan. 1, 1989 (storage stop date) thru June 8, 1989 (final settlement)]	--	--	\$ 576.30
Total Charges	(\$31,108.94)	(\$599.70)	\$29,186.50

(Positive Amounts Due Agra Grain Corp.
Negative Amounts Due Rickel Inc.)

On April 28, 1989, Rickel Inc. agreed to advance \$57,176.04 as partial settlement so that Agra Grain Corp. would resume loading.

Both parties agreed that \$20,701.82 was due Rickel Inc. because of an underfill of 8,118.36 bushels at \$2.55 per bushel.

Agra Grain Corp.'s settlement included a wire transfer of \$6,733.15 on June 8, 1989, and a deduction of \$2,109.70 for trucking charges paid by Agra Grain Corp. for Rickel Inc. Neither of these items were acknowledged in Rickel Inc.'s settlement or disputed in Rickel Inc.'s arbitration filings.

Delays in loading because of various disputes resulted in "carrying" charges being assessed weekly by Rickel Inc. on the unshipped balance. These charges totaled \$7,270.84.

Since Agra Grain Corp. demanded an advance pay-

ment for services prior to the completion of shipment, contrary to the shipping agreement, the \$57,176.04 represented early payment. Therefore, Rickel Inc. accrued interest of \$1,380.94 from April 28, 1989 to July 11, 1989 at 11.75 percent.

Rickel Inc.'s settlement claimed that \$31,108.94 was due Rickel Inc. while Agra Grain Corp.'s settlement indicated \$599.70 still was due Rickel Inc.

Agra Grain Corp.'s counterclaim asserted that Rickel Inc. agreed to a freight adjustment of \$26,438.20, equating to a freight savings of 5 cents per bushel on the entire contract of 528,765.28 bushels.

Agra Grain Corp. claimed interest of \$2,171.91 on \$57,176.04 at 11.75 percent from Jan. 1 until the advance payment date of April 28, 1989. Agra Grain Corp. also claimed interest of \$576.30 on \$11,259.27, which was the remaining storage and load-out charges due after discounts from Jan. 1 to June 8, 1989, the date of its final settlement.

The Decision

The arbitration committee's decision was based on the facts as presented by the parties. This case contained voluminous paperwork including more than 50 exhibits. The committee wishes to emphasize that under Section 6(a)(1) of the NGFA's Arbitration Rules, it is the parties' responsibility to present "[a] concise and clear statement of all that is claimed." The arbitration committee is not responsible for undertaking fact-finding searches or discovery.

The Jan. 20, 1989 written shipping contract, signed by both parties, is the single most definitive document involved in this case, and the decision of this committee was based largely upon its provisions. Much of the contract was not disputed.

A discussion of the disputed provisions follows:

■ **30-Day Shipment Period:** Third-party purchasers of CCC-owned grain normally buy the grain in-store and are responsible for supplying transportation. There is nothing in this case to indicate that Rickel Inc., as a CCC-grain buyer, was not responsible for supplying transportation. In fact, from Jan. 23, 1989 to Feb. 17, 1989, about half of the contracted grain was loaded out in trucks supplied by Rickel Inc. from two Agra Grain Corp. locations. There is no evidence that any Rickel Inc. trucks were turned away because of Agra Grain Corp.'s inability to load. Therefore, the arbitrators must conclude that Rickel Inc.'s inability to supply transportation was the primary factor preventing on-time completion of the shipping contract.

■ **Minimum Grade:** The shipping contract clearly stated that no less than U.S. No. 5 yellow corn would apply. However, numerous loads of sample grade corn were unloaded at destination (Hubinger Co. in Keokuk, Iowa) and apparently were accepted by Rickel Inc. There is no evidence to suggest that any loads were rejected. The behavior of the parties indicated that the minimum grade specified in the contract did not actually apply.

■ **Discount Schedule:** The arbitrators found no justification for Rickel Inc.'s higher discount scale on all sample grade corn. Hubinger Co. accepted all loads, including sample grade. There was no evidence to suggest that Rickel Inc. was subjected to any discount schedule other than the Hubinger Co. scale. Therefore, the arbitrators concluded that the Hubinger Co. scale of discounts stated in the shipping contract should apply to all shipments.

■ **Freight Differential:** The shipping contract specified that any freight adjustment on grain shipped from origins other than the basing point 1.5 miles west of the intersections of U.S. Highways 30 and 218, would be for the account of Agra Grain Corp. The arbitrators found no evidence that the adjustment was quantified during the shipping period, and no adjustments were claimed by either party in their final settlement documents. Further, it does not appear that the actual shipping points provided any freight advantage vis-a-vis the stated basing point. Therefore, the freight adjustment demanded in Agra Grain Corp.'s counterclaim was disallowed.

■ **Interest:** The arbitrators believed that the 30-day shipping period specified in the shipping contract was a reasonable time frame in which to move the contracted grain. As mentioned previously, the arbitrators also believed that Rickel Inc.'s failure to provide transportation was the primary factor behind Agra Grain Corp.'s inability to meet the deadline. Therefore, it was ruled that Rickel Inc. should pay interest on all monies owed to Agra Grain Corp. from the end of the contractual shipping period (Feb. 20, 1989) until the date paid. Interest was computed as follows:

\$104,172.50	Storage and load-out
<u>(\$35,737.19)</u>	Grade Discounts
\$68,435.31	Due Agra Grain Corp. for period Feb. 20 through April 28, 1989 at 11.75 percent interest x 67 days = \$1,476.05
\$68,435.31	Partial payment by Rickel Inc. for the period April 28 <u>(\$57,176.04)</u> through June 8, 1989
\$11,259.27	at 11.75 percent interest x 41 days = \$148.81
	Total Interest = \$1,624.66 due Agra Grain Corp.

■ **Carrying Charges:** Shipping delays were caused primarily by Rickel Inc.'s inability to provide transportation. Therefore, the arbitrators disallowed carrying charges demanded in Rickel Inc.'s claim.

The Award

The arbitration committee unanimously found the settlement as set forth in Table 2 to be a just and equitable resolution of this dispute.

The arbitrators also concluded that interest should accrue on \$1,024.96 due to Agra Grain Corp. at a rate of 11.75 percent from June 8, 1989 until the final payment date.

Table 2

	Arbitration Settlement
Contract Bushels (528,765.28 bushels)	
Load-out and Storage Charges (520,862.50 bushels at 20 cents per bushel)	\$104,172.50
Discounts on Corn Loaded Out	(\$35,737.19)
Subtotal	\$68,435.31 (*4)
Advance Payment by Rickel Inc. (April 28, 1989)	(\$57,176.04)
Subtotal	\$11,259.27 (*5)
Contract Freight Differential (at 5-cents-per-bushel on 528,765.20 bushels)	Disallowed
Underfill [8,118.36 bushels at \$2.55 per bushel; (214.98 bu. on previous cont.)]	(\$20,701.82)
Carrying Charges	Disallowed
Other Payments Previously Made	
Wired by Agra Grain Corp. Final Settlement Date June 8, 1989	\$6,733.16
Trucking Paid by Agra Grain Corp. Date Various	\$2,109.70
Interest Calculations Accrued at 11.75 percent (on footnote amt.) from...	
*4 — 67 days [Feb. 20, 1989 (end of 30 day contract period) to April 28, 1989 (advance payment)]	\$1,476.05
*5 — 41 days [April 28, 1989 (advance payment) to June 8, 1989 (final settlement)]	\$148.61
Total Charges	\$1,024.96
(Positive Amounts Due Agra Grain Corp. Negative Amounts Due Rickel Inc.)	

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

Dan B. Miller, chairman
Kokomo Grain Co., Inc.
Kokomo, Ind.

Curt Miller
Effingham Equity
Effingham, Ill.

Ray Lottie
General Mills Inc.
Minneapolis, Minn.

Arbitration Appeals Case Number 1665

Appellant: Rickel Inc., Kansas City, Mo.

Appellee: Agra Grain Corp., Cedar Rapids, Iowa

The Arbitration Appeals Panel, individually and collectively, reviewed all evidence submitted in Arbitration Case Number 1665. It also reviewed the findings and conclusion of the original arbitration committee. The Arbitration Appeals Panel unanimously affirmed the decision of the arbitration committee in favor of the appellee.

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

Thomas Feldmann
West Central Cooperative
Ralston, Iowa

John W. McCulley Sr.
Oakville Feed and Grain Inc.
Oakville, Iowa

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

Robert W. Pegan
Central States Enterprises Inc.
Altamonte Springs, Fla.