



Arbitration Decision

National Grain and Feed Association

August 9, 1990

Arbitration Case No. 1666

Plaintiff: Elders Grain Inc., Overland Park, Kan.

Defendant: Cargill Inc., Minneapolis, Minn.

Statement of the Case

On Jan. 31, 1989, the plaintiff, Elders Grain Inc., Overland Park, Kan., sold to the defendant, Cargill Inc., Omaha, Neb., one 75-car Union Pacific (UP) train of soybeans for shipment Feb. 10-28, 1989. The plaintiff's, defendant's and broker's confirmation all agreed the transaction involved: "one 75-car UP train, FOB Lincoln."

The UP train was loaded Feb. 14, 15 and 16 at Elders Grain in Lincoln, Neb., located on the Burlington Northern Railroad (BN) and was released by Elders to the UP.

✓ On Feb. 15, 1989, Cargill Inc. sold a UP 75-car soybean train FOB Lincoln for Feb. 10-28 shipment to Archer Daniels Midland Co. (ADM), Lincoln, Neb.

✓ On Feb. 16, 1989, Elders Grain tendered the train to Cargill Inc., which in turn tendered it to ADM. The train, by now in the hands of the UP, was billed to ADM Processing, Lincoln, Havelock Station (within the Lincoln switching district) routed UP, BN delivery.

The dispute in this case involved the liability for the switching charges of \$18,975 for the crosstown move from Elders' elevator on the BN to ADM on the BN via UP. The plaintiff contended that since switching charges on road-haul moves are absorbed

by the UP and the defendant elected to bill the train in a crosstown movement (thus creating these switching charges), the defendant should be held liable. The plaintiff stated that this \$18,975 switching charge consisted of \$6,225 from Elders Grain on the BN to the UP and \$12,750 from the UP to ADM on the BN.

The defendant contended that switching charges incurred at origin were the result of the plaintiff's obligation to provide a UP-origin train, FOB Lincoln, to the defendant and were, therefore, for the plaintiff's account. The defendant further contended that no discussion, verbal or written, ever took place between the parties regarding a road-haul move.

The Decision

The Arbitration Committee reached the following decision concerning this case:

The contract was written "FOB Lincoln, UP" and was silent regarding the destination. The seller -- having elected to load on the BN -- had the obligation to pay all switching costs, if any, from the loading elevator on the BN to the UP interchange in Lincoln, regardless of the destination. The buyer -- having elected to bill the train off-line from the UP to the BN in Lincoln -- had the obligation to pay all freight costs from the UP in Lincoln to the final destination.

The Award

The Arbitration Committee, therefore, found the plaintiff, Elders Grain, liable for \$6,225 which was the portion of the switching charges from the loading elevator to the UP. The committee found the defendant, Cargill Inc., liable for \$12,750, which was the portion of the switching charges from the UP in Lincoln to the destination on the BN. Since it was unclear to the arbitrators which party, if any, had paid the freight bill, it was ordered that these

amounts be paid immediately to the appropriate party.

The claims by both the plaintiff and defendant for reimbursement of arbitration costs were denied.

Submitted with the consent and approval of the Arbitration Committee whose names appear below:

David Houts, *chairman*
Central Soya Co. Inc.
Fort Wayne, Ind.

Jay Farrell
CPC International Inc.
Argo, Ill.

Bob Wallace
Farmers Cooperative Grain Terminal
Lincoln, Neb.