Arbitration Decision
National Grain and Feed Association

February 7, 1991

Arbitration Case Number 1669

Plaintiff: Peavey Grain Co., Henderson, Ky.

Defendant: Cargill Inc., Chattanooga, Tenn.

Statement of the Case

Peavey Grain Co., Henderson, Ky., and Cargill Inc., Chattanooga, Tenn., entered into a contract on Nov. 1, 1989 in which Peavey agreed to sell 210,000 bushels of U.S. No. 2 yellow corn for weekly shipment in December 1989. The contract specified "first official" grades to govern.

Peavey Grain Co. shipped the first unit on Dec. 8, 1989 from Shelburn, Ind., and provided Class C Official, "pink certificates." Cargill Inc. accepted the shipment.

On Dec. 15, 1989, Peavey Grain Co. loaded the second unit at Shelburn and asked Cargill Inc. for billing instructions. Cargill's merchant provided the instructions, but told Peavey's merchant that he could apply another unit with Class A official "white certificates" or ship the loaded unit with Class C certificates subject to a 2-cent per bushel discount. Peavey's merchant indicated that he would ship the loaded unit with Class C certificates under protest and would arbitrate if the shipment was discounted.

Peavey Grain Co. claimed it is the custom of the trade in shipments of rail grain in the Southeast to accept Class C certificates, together with the guarantee that the grain be "cool and sweet" upon arrival and with the understanding that the receiver still has the option to obtain Class A grades at destination, thereby having "most official" grades.

Peavey Grain Co. further contended that Cargill Inc. was not damaged and that the NGFA's Trade Rules cannot be used to inflict a penalty unless evidence of damage exists.

As damages, Peavey Grain Co. sought $1,063.82 plus interest from Dec. 15, 1989.

The defendant, Cargill Inc., responded that it is not trade custom in the Southeast to accept Class C certificates in a string trade without first securing the permission of all the parties in the string, which it did in the case of the first unit. The defendant then cited NGFA Grain Trade Rule 4B, which states: "The term 'Official Inspection' without specifying class shall mean Class A Official Inspection."

The Decision

The arbitrators agreed unanimously that rail grain is shipped in the Southeast market with Class C grade certificates provided it is always done with the permission of the buyer. If permission is not first obtained, the shipment can be considered to be out of contract citing NGFA Grain Trade Rule 4B. Thus, the arbitration committee found in favor of the defendant, Cargill Inc. on the issue of applicable grades.

The arbitrators also agreed that Peavey Grain Co.'s claim for damages did not apply in this case. Peavey Grain Co. shipped the grain out of contract and was offered alternatives by Cargill Inc.'s merchant. Since the

shipment was out of contract, Cargill Inc. was within its rights to impose the penalty. The panel found for the defendant, Cargill Inc.

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

Granville Tilghman, *Chairman*
General Utility Co. Inc.
Dunn, N.C.

Hal Davis
Cameron Brokerage Co.
Charlotte, N.C.

Jeff Edwards
Fred Webb Inc.
Greenville, N.C.

Arbitration Appeals Case Number 1669

Appellant: Peavey Grain Co., Minneapolis, Minn.

Appellee: Cargill Inc., Chattanooga, Tenn.

The Arbitration Appeals Panel, individually and collectively, reviewed all evidence submitted in Arbitration Case Number 1669. 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.

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

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

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

Richard McWard
Bunge Corp.
St. Louis, Mo.

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

Robert Obrock
Mid-States Terminals Inc.
Toledo, Ohio