Arbitration Decision
National Grain and Feed Association

May 23, 1991

Arbitration Case Number 1674

Plaintiff: Little Egypt Grain Co., Murphysboro, Ill.
Defendant: Consolidated Grain and Barge Co., Mound City, Ill.

Statement of the Case

On July 12, 1988, the defendant, Consolidated Grain and Barge Company, Mound City, Ill., (Consolidated) purchased 641,487.18 bushels of corn from the Commodity Credit Corporation in store at Little Egypt Grain Co.'s (Little Egypt) storage facility located on the Crab Orchard National Wildlife Refuge, Carterville, Ill.

On July 14, 1988, representatives of the defendant and plaintiff discussed by telephone the in-store sale of CCC-owned grain to the defendant and the terms for storage, loadout, weights, grade determination and settlement.

On July 18, 1988, the defendant sent a letter confirming Consolidated's understanding of the terms to the plaintiff. While the defendant's employee stated in an affidavit that the letter was sent, the plaintiff denied receiving it. The letter, dated July 18, 1988, provided:

"In our discussion we agreed that destination weights and grades would be used. Consolidated will pay your published loadout tariff of eight cents per bushel at the completion of the grain loading. We also agreed that the grain movement and settlement would be similar to our previous movements out of your warehouse. The enclosed discount sheet will be used. Grain (SIC) of lessor quality than the warehouse receipts will be for your account....Final settlement will be made upon completion of delivery of the corn to its destination."

During consideration of this case, the relationship between the two parties on previous CCC grain sales also became an issue regarding confirmations and amendments to agreements. The defendant had previously purchased at least three lots of CCC-owned corn in-store at the plaintiff's facility. Submitted exhibits disclosed at least two letters of agreement on the prior lots sent by the defendant to the plaintiff confirming an 8-cent-per-bushel load-out rate. A Feb. 3, 1988 letter confirmed origin official grades, but was silent on weights. A letter dated March 17, 1988 confirmed destination grades and weights.

The defendant testified that on March 30, 1988, it orally confirmed with the plaintiff that an additional 90,000 bushels of corn had been purchased from CCC and would be covered under the terms of the March 17, 1988 letter. The plaintiff contended that it amended the March 17, 1988 letter to read, "weights to be determined" and then signed and returned it to the defendant. The defendant, however, denied receipt of any such letter containing changes from the plaintiff.

On Sept. 8, 1988, the defendant notified the plaintiff by telephone that it would begin loading out the corn on Sept. 9, 1988.

On Sept. 9, 1988, the plaintiff sent a letter to the defendant confirming "a load-out tariff of 8.35 cents per bushel of corn." The plaintiff also stated, that "[i]n our discussion we agree to used destination weights and grades with Little Egypt Grain Co. retaining its rights to origin weights and grades under the conditions of the release from Commodity Credit." The defendant's employee testified that he promptly called the plaintiff upon receipt of the Sept. 9 letter and informed the plaintiff that the letter did not correctly set forth the agreement between Consolidated and Little Egypt. The defendant also requested a meeting with the plaintiff.

On Sept. 13, 1988, two employees of the defendant met with a representative of the plaintiff at the plaintiff's facility. The defendant again stated its disagreement with the change in terms contained in the plaintiff's Sept.

9 letter. The plaintiff told the defendant that Little Egypt was not then able to load out the 20,000 bushels per day pursuant to the Uniform Grain Storage Agreement, but Little Egypt had additional equipment that would be supplied to meet the load-out requirement. The plaintiff requested a surcharge to cover the cost of meeting the load-out requirement. The defendant did not agree to pay a surcharge.

On Sept. 14, 1990, the plaintiff received a telephone call from the Illinois Department of Agriculture regarding a complaint received from the defendant about the load out of CCC-owned grain at Little Egypt. The Illinois Department of Agriculture indicated that the plaintiff should, within three days, obtain enough equipment to load out 20,000 bushels per day. Otherwise, the Illinois Department of Agriculture said it would load out the CCC inventory.

On Sept. 15, 1990, the plaintiff sent a letter to the Illinois Department of Agriculture stating that, among other things, "[W]e are using our PerformAire 4000 pneumatic grain handling equipment to reach an operating level of 2,500 bushels per hour for an eight-hour operating capacity of 20,000 bushels of grain....Little Egypt has no intention to operate in violation of the Uniform Grain Storage Agreement, but consideration must be made for the fact that the 'Third-Party Agreement' only requests a load out capacity of 12,000 bushels of grain per day."

On Sept. 16, 1988, the plaintiff sent a letter to the defendant stating, "[I]n our meeting it was agreed that Little Egypt Grain Co. would increase handling capacity to accommodate 20,000 bushels in a standard workday, and Consolidated Grain and Barge would consider what this cooperation would be worth financially to them during the week of Sept. 19-23."

At this point, relations between the defendant (the third-party buyer of CCC-owned grain) and the plaintiff (the storing warehouseman) deteriorated, each finding fault with the other's conduct. The defendant contended that the plaintiff adulterated grain and split-loaded trucks from different storage sheds, resulting in wide variations in the quality of the corn loaded in a given truck. The plaintiff contended that the defendant improperly sampled and graded the corn at destination. Additional correspondence was made concerning these charges and contract interpretations.

In late January 1989, the plaintiff completed the load out of the corn. The defendant prepared and sent its final settlement to the plaintiff along with payment of $266.91 in accordance with the defendant's understanding of the agreement of the parties. The plaintiff rejected the settlement and asserted claims against the defendant.

Ultimately, the plaintiff initiated this arbitration seeking contractual compensatory damages in the amount of $64,736.18, plus punitive damages of $100,000. The contractual damages sought included, among other things, $6,414.87 for destination weight damages, $42,284.13 for moisture shrink damage and $16,736.18 for total damage improvement.

The Decision

The arbitration committee's decision was based upon the facts as presented by the parties. This case contained voluminous paperwork, including more than 90 exhibits. Under Section 6(a)(1) of the NGFA's Arbitration Rules, it is the responsibility of the parties 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 primary issue involved in this case was to determine whether an agreement of the parties existed and, if so, which letter evidenced that agreement. The defendant submitted an affidavit of its employee that the defendant's confirmation letter of July 18, 1988 was prepared and mailed to the plaintiff and that the letter contained the terms agreed to in the telephone conversation of July 14, 1988. While the plaintiff denied receipt of the letter, it acknowledged that the telephone conversation of July 14, 1988 occurred. The plaintiff argued that its letter dated Sept. 9, 1988 should be accepted as the contract between the parties. The defendant acknowledged receipt of the plaintiff's Sept. 9 letter, but immediately objected to the terms it considered different from the terms contained in the defendant's letter of July 18 and the telephone conversations of July 14, 1988 and Sept. 8, 1988.

NGFA Grain Trade Rule 6 provides in pertinent part that:

> *"(a)* ***Confirmation****: It shall be the duty of both buyer and seller, not later than the close of business day following date of trade, to mail, each to the other, a confirmation in writing (the buyer a confirmation of purchase, and the seller a confirmation of sale) setting forth the specifications as agreed upon in the original articles of trade. Upon receipt of said confirmation, the parties thereto*

shall carefully check all specifications named therein and, upon finding any differences, shall immediately notify the other party to the contract, by wire, or telephone and confirm in writing, except in the case of manifest errors and differences of minor character, in which event, notice by return mail will suffice....

"(c) If either buyer or seller fails to send out confirmation, the confirmation sent out by the other party will be binding upon both in case of any dispute, unless confirming party has been immediately notified by nonconfirming party, as described in 6(a), of any disagreement with the confirmation received."

The arbitration committee reached the following conclusions concerning this case: The July 18, 1988 confirmation letter written by the defendant was the most definitive document submitted in this case and is found to be the agreement of the parties reached on July 14, 1988. The parties' prior course of dealing with one another revealed that the defendant had sent confirmation letters to the plaintiff in the past to confirm agreements reached on CCC-owned corn purchased in-store from the plaintiff's warehouse. The plaintiff, however, did not routinely send confirmations of agreements in compliance with NGFA Grain Trade Rule 6 on dealings between the parties. The defendant's letter of July 14, 1988 was nearly identical to its prior agreement with the plaintiff, as evidenced by the defendant's March 1988 confirmation letter.

The Award

The plaintiff's claims for storage and overage based upon origin weights were denied. The agreement provided for destination weights to govern.

The plaintiff's claim for load-out surcharges, FGIS charges, musty/sour and infestation rebates, and damage rebates were denied because they were not agreed to by the defendant.

The plaintiff's claim for an overage on a February 1988 shipment was denied. The defendant priced the overage on the truck grain in accordance with NGFA Grain Trade Rule 12(b) on the date the last truckload of grain on that purchase was unloaded.

The plaintiff's claim for punitive damages was denied as not supportable by the proven facts.

The final settlement of $266.91 tendered to the plaintiff by the defendant was found to be reasonable, correct and final.

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

Gary Jordan, *Chairman*
The Wright-Lorenz Grain Co. Inc.
Salina, Kan.

Lynn Olsen
Continental Grain Co.
Kansas City, Mo.

David Reiff
Reiff Grain and Feed Inc.
Fairfield, Iowa

Arbitration Appeals Case Number 1674

Appellant: Little Egypt Grain Co., Murphysboro, Ill.
Appellee: Consolidated Grain and Barge Co., Mound City, Ill.

The Arbitration Appeals Committee, individually and collectively, reviewed all evidence submitted in Arbitration Case Number 1674. It also reviewed the findings and conclusion of the original arbitration committee.

The Arbitration Appeals Committee unamimously 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

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

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

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