



Arbitration Decision

National Grain and Feed Association

May 6, 1993

Arbitration Case Number 1691

Plaintiff: Fred Webb Inc., Greenville, N.C.
Defendant: Cargill Inc., Chesapeake, Va.

Statement of the Case

This dispute involved the type of grade used and the timeliness of reporting the grades on three barges.

On Dec. 12, 1990, Fred Webb Inc. sold to Cargill Inc. 600,000 bushels of U.S. No. 2 soft red wheat delivered to Chesapeake, Va. The shipment was to be scattered between Dec. 15, 1990 and Jan. 31, 1991. The contracts called for destination grades and weights. Cargill's contract contained the clause: "*Cargill discount scale on date of shipment to apply.*" Fred Webb's contract made no mention of a discount scale.

The plaintiff claimed the defendant violated the "spirit" of NGFA Grain Trade Rule 4B -- "Official Inspection" -- and violated Grain Trade Rule 17 -- "Quality Outside Contract Terms" -- by not having the barges graded before they were unloaded nor notifying the plaintiff of the off-grade factors before unloading. The plaintiff further claimed that Grain Trade Rule 16(a) -- "Condition Guaranteed on Arrival" -- was violated when the defendant did not determine the condition of the grain and official grade before unloading. The plaintiff claimed the barges graded "clear" at origin and said it believed the discounts imposed were in error and requested \$21,811.93, plus interest, to settle the dispute.

Circumstances pertaining to the three barges involved in this dispute are as follows:

■ Barge FH 183 was unloaded on Feb. 12, 1991 at Cargill's North Elevator at Norfolk, Va., and according

to the notation on the weight certificate was checked empty at 16:05 hours. The barge grade issued by the Virginia Department of Agriculture, dated Feb. 13, 1991, based upon a submitted sample, was "Garlicky" -- three garlic bulblets per 1,000 grams. A reinspection issued Feb. 14, 1991, based on the file sample was "Garlicky" -- 4 1/3 garlic bulblets per 1,000 grams.

■ Barge AT 186 was unloaded on Feb. 13, 1991 at Cargill's North Elevator at Norfolk, Va., and according to the notation on the weight certificate was checked empty at 16:30 hours. A grade certificate was issued by the Virginia Department of Agriculture, dated Feb. 14, 1991, based on a submitted sample. The barge graded "Garlicky" -- five garlic bulblets per 1,000 grams.

■ Barge AT 186 was unloaded at Cargill's North Elevator at Norfolk, Va., and according to the notation on the weight certificate was checked empty at 17:55 hours. A grade certificate issued by the Virginia Department of Agriculture, dated Feb. 15, 1991, based on a submitted sample showed the barge "Garlicky" -- 4 1/3 garlic bulblets per 1,000 grams.

The Decision

The arbitrators unanimously found in favor of the defendant.

The contract called for "destination" grades. No reference was made as to the type of grade or the sampling method to be used. The two parties had used submitted samples, as well as official grades and desti-

nation scale of discounts at time of shipment, to settle shipments in prior trades. The contract did not contain any guaranteed-condition-upon-arrival clause. Thus, the arbitrators concluded that Grain Trade Rule 16 was not applicable. Grain Trade Rule 17 addresses "Quality Outside Contract Terms." In contrast, Cargill's contract contained the clause "Cargill discount scale on date of shipment to apply." Fred Webb's contract was silent on the matter. The arbitrators concluded that the barges shipped were within the terms of the contract.

The arbitrators agreed that Barge Trade Rule 2(i) should apply, as this rule addresses destination grades on barges. Nothing in the documentation submitted by either party indicated that the inspection was not conducted within five calendar days of the date of arrival of the barges. Given the time of day that unloading of the barges was completed, the arbitrators did not believe there was an excessive time delay for obtaining the grades. The plaintiff was afforded a reasonable opportunity to request an appeal of the destination grade. The facts show that the plaintiff requested an appeal on Barge FH 183 one day after the original submitted inspection certificate was issued. This shows that Fred Webb Inc. was informed of the original grade within 24-48 hours.

The plaintiff did not provide any documentation to support its statement that the origin house grade was "clear," even though this was irrelevant as the contract called for "destination" grades. This dispute would have been avoided if the parties had addressed the type of destination grades to be used.

Therefore, the claim submitted by the plaintiff, Fred Webb Inc., was denied.

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

Jim Keistler, *Chairman*
Twomey Company
Smithshire, Ill.

James Whitaker
Southern States Cooperative Inc.
Richmond, Va.

John Shepard
Nabisco Brands Inc.
Toledo, Ohio

Arbitration Appeals Case Number 1691

Appellant: Fred Webb Inc., Greenville, N.C.
Appellee: Cargill Inc., Chesapeake, Va.

The Arbitration Appeals Committee, individually and collectively, reviewed all the evidence submitted in Arbitration Case Number 1691. It also reviewed the findings and conclusions of the original arbitration committee.

The Decision

The Arbitration Appeals Committee unanimously affirmed the decision of the arbitration committee in favor of the appellee.

Respectfully Submitted,

John L. McClenathan, *Chairman*
GROWMARK Inc.
Bloomington, Ill.

Tommy D. Couch
Ohio River Grain Partnership
Cincinnati, Ohio

David D. Kuk
Countrymark Cooperative Inc.
Indianapolis, Ind.

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

Richard A. McWard
Bunge Corp.
St. Louis, Mo.