



Arbitration Decision

National Grain and Feed Association

September 9, 1993

Arbitration Case Number 1699

PLAINTIFF: Burmeister Farm Store, Ltd., Harlan, Iowa

DEFENDANT: Scoular Grain Company, Omaha, Neb.

Statement of the Case

This case involved a claim by the plaintiff, Burmeister Farm Store, Ltd. ("Burmeister"), against the defendant, Scoular Grain Company ("Scoular"), involving weights used for final settlement on a 10-car unit train shipment of corn.

Scoular's purchase contract provided that "FIRST CERTIFIED" weights would apply and that the "NATL GRAIN & FEED" Trade Rules would govern the transaction. The unit shipment was billed by Scoular to Goldkist Feed Mills ("Goldkist") at Jasper, Ala., with instructions for "DESTINATION WEIGHTS." Burmeister contended that Scoular violated NGFA Grain Trade Rule 21(b) because Scoular did not furnish billing to a destination where certified weights were available or request weighing, as required under NGFA Grain Trade Rule 4.A.1. or 4.A.2.

Scoular responded that it was common trade practice to use Goldkist's certified weights when no origin weight was available. Scoular also said that it was not common trade practice to obtain shipper permission before a unit was billed to Goldkist at Jasper. Scoular agreed that the destination weight was not a supervised certified weight, but argued that it was unclear that Scoular was responsible for providing a "FIRST CERTIFIED WEIGHT" under NGFA Grain Trade Rule 21. The contract did not specify a "destination certified weight for the responsibility of the buyer." Scoular also argued that the unsupervised certified weights at Goldkist were more reliable than Burmeister's origin weights based on its KYAOT loadout system, a "volumetric device."

Burmeister claimed that in the absence of certified weights, its unofficial weights at origin obtained on a KYAOT loadout system should prevail over the destination "house weights" of Goldkist, used by defendant for final settlement. Scoular demanded additional payment in the amount of \$3,276.77 for 1,276.25 bushels of corn at the contract price of \$2.5657.

The Decision

The primary issue in this case was whether Scoular violated NGFA Grain Trade Rule 21(b) by not furnishing billing instructions to a destination where certified weights were available, or request weighing as per NGFA Grain Trade Rule 4.A.1 or 4.A.2. If such a violation was found to have occurred, the arbitrators also were faced with determining what compensation was due Burmeister.

The arbitrators concluded that Scoular failed to comply with the express provisions of the NGFA Grain Trade Rules because the destination did not have a supervised certified weight available (*i.e.* no certified weigher was available to weigh the rail cars upon arrival). While Scoular may have assumed that Goldkist's weights were in compliance with NGFA Grain Trade Rule 4.A.2. because Goldkist's scales were otherwise certified by the serving railroad and acceptable for railroad claims purposes, the after-the-event facts showed that the weigher was not licensed. Thus, the Goldkist weights failed to meet the requirements of NGFA Grain Trade Rule 4.A.2., which requires that "certified" weights be "*obtained by a licensed weigher, using an approved scale, both the weigher and the scales being under the*

general supervision of a disinterested supervisory agency [emphasis added]."

In the absence of certified weights meeting the requirement of NGFA Grain Trade Rule 4.A.2., the arbitrators needed to determine an acceptable weight for settlement purposes that was fair to both parties. Burmeister estimated the amount of corn loaded in the rail hopper cars using its KYAOT loadout system, which weighs approximate bushels by volume rather than specific weights in rail hopper cars. While Burmeister documented the general reliability of its loadout system, the arbitrators concluded that Burmeister's system was not an exact measure of grain loaded for shipment.

The Award

The arbitrators decided that neither Burmeister's nor Scoular's weights could be considered an exact measurement of the quantity of grain shipped. Thus, the arbitrators believed the fairest course was to average the two weights. Scoular's destination weights were 33,712.50 bushels. Burmeister's estimates of origin weights were 34,663.01 bushels. The difference between the two weights was 950.51 bushels, with one-

half of that difference being considered a shortage of 475.26 bushels.

The only price provided the arbitrators by the parties was the contract basis price of \$2.5675 per bushel. The arbitrators determined that Burmeister was due the contract price of \$2.5675 per bushel on the shortage. Burmeister was awarded \$1,220.20, with interest at the rate of 8 percent per annum from Feb. 26, 1992 (the date of settlement) through date of payment of the award.

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

Robert R. Mickey, Chairman
Central Grain Co.
Belvidere, Ill.

Gary Williamson
Grain Sales Co.
Atlanta, Ga.

Jarvis Haugeberg
Churchs Ferry Farmers Co-op
Churchs Ferry, N.D.