



# Arbitration Decision

National Grain and Feed Association

March 2, 1995

## Arbitration Case Number 1706

**Plaintiff:** Eades Commodities Co., Omaha, Neb.

**Defendant:** Theco International Inc., Kenner, La.

### Statement of the Case

Eades Commodities Co., (Eades) purchased from Theco International Inc. (Theco) approximately 750 short tons of whole cottonseed of "good feeding quality," for shipment, October through November 1992. Eades contract number 16394 was dated Oct. 14, 1992, and was confirmed and returned on Oct. 30, 1992. This contract was purchased through a broker, Central Texas Commodities (Central), Stephanville, Texas (*broker contract number C-3587*).

Subsequently, on Oct. 17, 1992, Eades entered into another contract (*Eades contract number 16411*) with Theco for 750 short tons of whole cottonseed of "good feeding quality," for shipment from that date through November 1992. The contract was confirmed by Central (*broker contract number C-3591*).

Both Eades contracts were signed and returned with the notation "Max. 10% damage" added and initialed. Both returned, signed contracts were stamped received by Eades on Oct. 30, 1992.

By the end of the contract shipping period (Nov. 30, 1992), only 340.85 tons of suitable cottonseed had been applied against the contract. During and after such time, communication was poor between the principal parties. Eades, stating it considered Theco in

default, bought-in the balance of the tonnage at considerably higher prices and requested an award of \$47,349.98.

Theco denied the claim by Eades and also disputed the jurisdiction of the National Grain and Feed Association as arbiter in the dispute.

### The Decision

The arbitrators reached the following decision:

Eades had the right to file the case under the NGFA Arbitration Rules. Theco is obligated to abide by the award, as the NGFA Arbitration Rules apply. Both Eades and Theco were active NGFA members, and arbitration is compulsory among active members, [Article II, Sec. 3(f) of the NGFA Bylaws and Section 3(a)(1) of NGFA Arbitration Rules]. Eades also filed its request for arbitration within the time frame required under the Arbitration Rules.

Based upon the failure of Theco to apply the entire contracted tonnage, Eades had the right to "buy-in" the remainder of 1,160.85 short tons of cottonseed at the market price. Since the price for the tonnage bought-in at the market was greater than the contract prices established in the Eades-Theco contracts, Eades was due compensation from Theco.

## The Award

The damages were adjusted to reflect a 10 percent discount from the market price of the replacement tonnage for the premium over contract quality.

The arbitrators computed the award as follows:

<b><u>Eades contract 16394</u></b>	
Average price paid (freight adjusted)	\$153.36
Less discount-10% max. damage	<u>-15.34</u>
Market price	\$138.02
Contract price (same freight basis)	<u>\$109.50</u>
Lost/Ton	\$ 28.52
Tons short on contract	<u>409.15</u>
<b>Award to Eades</b>	<b>\$11,668.95</b>
<b><u>Eades contract 16411</u></b>	
Average price paid (freight adjusted)	\$160.53
Less discount-10% max. damage	<u>- 16.05</u>
Market price	\$144.48
Contract price (same freight basis)	<u>\$122.30</u>
Lost/Ton	\$22.18
Tons short on contract	<u>750.00</u>
<b>Award to Eades</b>	<b>\$16,635.00</b>
Plus: Freight on rejected load	<b>\$726.00</b>
<b>Total Award due Eades on both contracts</b>	<b><u>\$29,029.95</u></b>

Interest was to be paid by Theco to Eades at the rate of 6 percent from March 1, 1993, or \$4.77 per day, until the date payment was received by Eades.

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

**Michael F. Malecha, *Chairman***  
Louis Rich Co.  
Madison, Wis.

**William McDonald**  
Delta Gin Co. Inc.  
Newellton, La.

**Bob Peel**  
Texas Farm Products Co.  
Nacogdoches, Texas