



# Arbitration Decision

National Grain and Feed Association

May 11, 1995

## Arbitration Case Number 1714

**Plaintiff:** Timberlake Sales Inc., Springfield, Ill.

**Defendant:** Tampa Independent Dairy Farmers Association, Plain City, Fla.

### Statement of the Case

This dispute involved a hominy feed contract between Timberlake Sales Inc., the plaintiff-seller, and Tampa Independent Dairy Farmers Association, the defendant-buyer.

The contract was evidenced by a confirmation issued by both the plaintiff-seller and the broker, Carolina Brokerage Company Inc. The contract provided for rail shipment of 84 hopper cars of hominy feed with shipment of four cars per week from Nov. 9, 1992 through March 29, 1993.

The plaintiff-seller alleged that the defendant-buyer withheld \$11,250 from invoiced and shipped amounts because some rail cars were shipped out of schedule. The defendant-buyer contended that the amounts were properly withheld because of demurrage incurred by the defendant-buyer as the result of the out-of-schedule shipments and because three cars were routed by the plaintiff-seller on the wrong railroad. The defendant-buyer further contended that it actually incurred \$16,690 in demurrage costs because of the plaintiff-seller's breach of contract, which the defendant-buyer said was more than the amount of payments withheld.

Both parties agreed that the plaintiff-seller failed to make shipment on schedule during the weeks of Dec. 21, 1992 and Dec. 28, 1992. The plaintiff failed to ship five cars on schedule and shipped three cars on the Norfolk Southern Railroad because of the holiday car shortage on both the CSX and the Norfolk Southern Railroads. This

irregular shipping during the weeks of Dec. 21 and Dec. 28 contributed to the defendant-buyer's demurrage during the winter and spring of 1993.

### The Decision

The arbitrators found that the plaintiff-seller breached the contract with the defendant-buyer because of the out-of-schedule shipments. The plaintiff's contention that the defendant's demurrage bills were "excessive" implied that the plaintiff itself admitted to being responsible to the defendant for some demurrage.

Both parties referred to the communication and lack thereof between the parties during January 1993. The broker involved in this trade made numerous phone calls to the defendant during January 1993. There is a responsibility on both sides of a dispute to stay somewhat abreast of car shipments. In this case, the defendant-buyer had opportunities to request updated shipment information from the broker during phone calls in January 1993.

While the three cars incorrectly routed on the Norfolk Southern were a problem for the defendant-buyer, the arbitrators concluded that the five cars not shipped at all during December 1992 were the greater cause of the defendant-buyer's problems. The arbitrators, therefore, concluded that demurrage on the three cars shipped on the Norfolk Southern and pulled in January 1993 could have been minimized if the parties had responsibly communicated and cooperated. The plaintiff failed to provide any excuse for not shipping the five cars until January 1993.

## The Award

The arbitrators concluded that the defendant-buyer was entitled to a credit of \$7,500 for demurrage incurred as the result of the plaintiff-seller's breach of contract. The plaintiff's unpaid invoice was for \$11,250. The defendant-buyer owed \$3,750 to the plaintiff-seller. Therefore, Timberlake Sales Inc. was awarded a judgment against Tampa Independent Dairy Farmers Association amounting to \$3,750, plus interest at the rate of 7 percent per annum from April 30, 1993 until paid.

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

**Steve Norris**, *Chairman*  
Southern States Co-op Inc.  
Richmond, Va.

**Ronnie Felderhoff**  
Muenster Milling Co. Inc.  
Muenster, Texas

**Glenn Skold**  
Farmland Industries Inc.  
Kansas City, Mo.



## Arbitration Appeals Case Number 1714

**Appellant: Timberlake Sales Inc., Springfield, Ill.**

**Appellee: Tampa Independent Dairy Farmers' Association, Inc., Plant City, Fla.**

The Arbitration Appeals Committee, individually and collectively, reviewed all evidence submitted in Arbitration Case Number 1714. It also reviewed the findings and conclusion of the original arbitrators.

The Arbitration Appeals Committee believed there was a lack of supporting facts presented by the two parties. While the appellant clearly was at fault for not shipping within contract terms and for not informing the appellee that the shipments were not being made on time, the appellee also bore some responsibility by not following the Feed Trade Rules when it became aware that the shipments were out of contract terms. Had a revised shipping schedule been agreed upon at that time, some of the demurrage incurred could have been avoided.

The Arbitration Appeals Committee believed that shared responsibility should equate to shared damages.

Thus, the Arbitration Appeals Committee unanimously affirmed the decision of the Arbitration Committee in favor of the Appellant for \$3,750, plus interest.

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

**Donald J. Cameron**  
Cameron Brokerage Co.  
Charlotte, N.C.

**Robert W. Pegan**  
Central States Enterprises  
Heathrow Fla.

**Thomas Feldmann**  
West Central Cooperative  
Ralston, Iowa

**Wellington White**  
O.H. Kruse Grain and Milling  
Ontario, Calif.