



Arbitration Decision

National Grain and Feed Association

April 27, 1995

Arbitration Case Number 1722

Plaintiff: Farmers Grain Terminal Inc., Greenville, Miss.

Defendant: Rice Technology Inc., Cleveland, Miss.

Statement of the Case

This case involved a claim from Farmers Grain Terminal (FGT) concerning an alleged default on a sale of rough rice to Rice Technology Inc. (RTI).

On Feb. 2, 1994, FGT entered into a sales contract¹ for 45,000 hundredweight of rough rice with RTI. FGT issued a sales confirmation that was duly signed by RTI and returned. RTI did not issue its own confirmation, nor was there a broker involved in the trade.

The contract terms called for delivery of 45,000 hundredweight of U.S. No. 2 or better long grain rough rice by truck to RTI's mill in Cleveland, Miss., at a price of \$13.89 per hundredweight. The confirmation signed by both parties called for time of shipment to be "as directed by buyer."

FGT shipped 4,263 hundredweight of rice during the period Feb. 4-24, 1994 and an additional 4,737 hundredweight of rice during the period March 23-25, 1994. RTI paid for both of these lots at the contract price.

An ice storm hit the Cleveland, Miss., area on Feb. 9-10, 1994, causing RTI to cease its milling operations for approximately two weeks and to stop accepting deliveries from FGT under the disputed contract. In late March 1994, RTI informed FGT that it would be unable to accept further deliveries on the contract.

RTI made several proposals to FGT to change the original contract price for later delivery periods. All of these suggestions were rejected by FGT. On June 14, 1994, FGT informed RTI that if deliveries did not resume on or before June 21, 1994, FGT would consider RTI in default of the contract. No subsequent deliveries were made to RTI.

FGT sold 21,000 hundredweight of long grain rough rice to a third party on June 15, 1994 at a price of \$7.40 per hundredweight delivered to Greenville, Miss. FGT presented this contract as the basis for establishing the fair market value for the buy-in of the defaulted portion of the contract and claimed a loss of \$233,640 plus interest on this sum from Feb. 12 to Sept. 9, 1994.

The Decision

The arbitrators concluded that the primary issues involved in this case were:

- Did a contract exist between the two parties?
- Was the contract sufficiently clear to determine the intentions of the parties as to execution of the contract?
- Was RTI excused from performance of the contract because of the ice storm?
- If there was a default, what is the fair market value to be used in determining the buy-in price?

¹The sales contract expressly provided that "the contract shall be subject to the National Grain and Feed Association's Trade Rules applicable on the date this contract is signed." The contract also contained a dispute resolution clause providing for arbitration "before the National Grain and Feed Association (NGFA) under NGFA Arbitration Rules."

First, the arbitrators determined that a contract did exist between the two parties. FGT issued a confirmation of the trade and it was signed without change by RTI. In addition, neither party disputed the existence of the original contract.

Second, the arbitrators determined that the language in the contract was not clear concerning the intended delivery schedule. The phrasing used in the confirmation ("*time of shipment/delivery: as directed by buyer*") seemed to be very vague and allowed for the possibility of disputes. However, both parties seemed to agree that the deliveries were to be made on a regular, recurring basis starting in February 1994. The two lots that were shipped and paid for seemed to confirm this fact.

Third, RTI claimed that the ice storm prevented it from operating its mill for a period of approximately two weeks. During this two week period, RTI lost its sale to a Mexican customer as a result of RTI's inability to meet the agreed shipment schedule with that customer. In turn, RTI claimed that this cessation of operations excused it from further performance on the FGT-RTI contract.

The arbitrators determined that the force majeure clause contained in the confirmation allowed for delay in performance due to acts of God. But it did not permit either the buyer or seller to completely terminate performance after a short-term delay.

RTI also claimed that the original contract was made specifically to fulfill its commitment to the Mexican buyer and that once RTI no longer had that sale, it could not perform on the FGT contract because of the high price of the contract.

The arbitrators concluded that these arguments had no merit, finding that each contract must stand on its own unless there is a specific understanding between the two parties that one contract is conditional on performance of a second contract. The arbitrators found no such understanding in this dispute. Similarly, the fact that the market may rise or fall after a contract is entered into has no bearing on the obligations of either party to perform.

Fourth, FGT presented the arbitrators with a sales contract dated June 15, 1994 as evidence of the fair market value of the contracted rice on June 22, 1994, in

accordance with NGFA Grain Trade Rule 10. RTI argued that this contract contained different terms from those found in the original contract which made the price abnormally low. However, RTI provided no evidence of alternative values for the applicable date.

While the arbitrators were troubled with the large discrepancy in prices, the absence of any other values being presented and the illiquidity of the rice market left no alternative but to accept FGT's submission as evidence of the fair market value on June 22, 1994.

The Award

The arbitrators unanimously found that RTI defaulted on the contract made with FGT on June 22, 1994, and that damages should be awarded to Farmers Grain Terminal Inc. as follows:

Contract price:	\$ 13.89 per hundredweight
Fair market value (June 22, 1994):	— \$ 7.40 per hundredweight
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	\$ 6.49 per hundredweight
Multiplied by unshipped balance:	X 36,000 hundredweight
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	\$238,640.00
Plus interest at a rate of 9 percent for the period June 22, 1994 to Sept. 9, 1994 (the date of filing of the arbitration), which equals \$4,551.18.	
Total award:	\$238,191.18

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

J. Stephen Lucas, Chairman
Louis Dreyfus Corp.
Wilton, Conn.

Pierre Badertscher
Garnac Grain Co.
Kansas City, Mo.

John Wood
Commodity Specialists Co.
Overland Park, Kan.