



Arbitration Decision

National Grain and Feed Association

January 18, 1996

Arbitration Case Numbers 1732 and 1732B

Primary Complaint

Plaintiff: Farmland Industries Inc., Kansas City, Mo.

Defendants: Bartlett & Co., Kansas City, Mo.,
and Consolidated Grain & Barge Co., Mandeville, La.

Cross-Complaint

Plaintiff: Bartlett & Co., Kansas City, Mo.

Defendants: Zen-Noh Grain Corp., Covington, La.,
and Consolidated Grain and Barge Co., Covington, La.

Statement of the Case

On June 10, 1993, Bartlett & Company (Bartlett) sold the Union Equity Division of Farmland Industries Inc. (Farmland) 220,000 bushels of U.S. No. 2 yellow corn, CIF NOLA. On July 14, 1993, Zen-Noh Grain Corp. (Zen-Noh) sold Bartlett 220,000 bushels of U.S. No. 2 yellow corn, CIF NOLA. On July 21, 1993, Consolidated Grain and Barge Co. (Consolidated) sold Zen-Noh 220,000 bushels of U.S. No. 2 yellow corn, CIF NOLA. Zen-Noh Grain Corp. is the parent company of Consolidated Grain & Barge and will be referred to jointly in this decision as "Consolidated."

All contracts allowed for application of barges during the last half of July 1993, with first official grades (origin) and destination official weights to govern. All contracts set forth discounts for U.S. No. 3 yellow corn, with a maximum of 15 percent moisture. No contract included terms guaranteeing condition upon arrival.

On July 1, 1993, the U.S. Coast Guard closed the upper Mississippi River to navigation above a point just north of St. Louis, Mo. On July 9, 1993, the Coast Guard closed the Illinois River from mile post 0 to mile post 63. The closure was later extended to mile post 118. The

river north of St. Louis remained closed until Aug. 20, 1993.

On July 16, 1993, Consolidated loaded corn on Barge VLB 7261 at Utica, Ill., on the Illinois River (mile post 229). On July 22, 1993, the Kankakee Grain Inspection Service issued an official grain inspection certificate for U.S. No. 3 yellow corn, 14.7 percent moisture, on Barge VLB 7261, with sample dates of July 16-21, 1993.

On July 22, 1993 an original bill of lading was issued by American Commercial Barge Line (ACBL) consigning Barge VLB 7261 to Zen-Noh, Convent, La. On July 29, 1993 Barge VLB 7261 was reconsigned to Farmland at New Orleans for the account of Bartlett, account of Zen-Noh.

On Sept. 6, 1993, Barge VLB 7261 arrived in New Orleans, La. Farmland began attempting to find a buyer for the "damaged" grain. On Oct. 22, 1993, 45 days later, Thionville Laboratories issued a certificate of analysis reporting a probe grade of U.S. sample grade yellow corn, with 77.7 percent total damage and a musty odor.

On Oct. 29, 1993, Farmland sold the corn contained in Barge VLB 7261 to Bee Agriculture, Beeville, Texas. Barge VLB 7261 subsequently was re-routed to Corpus Christi, Texas.

Farmland, the first plaintiff, claimed damages from Bartlett of \$40,541.46 in loss of value, plus \$23,418.27 in the associated sale costs of freight, demurrage and reconsignment. As an intermediate party in the string of applications, Bartlett, the second plaintiff, claimed damages from Consolidated equivalent to those being claimed by Farmland.

The Decision

In making its claim, Farmland asked the arbitration committee to look beyond the contract, beyond the NGFA Trade Rules and beyond trade practices to the Uniform Commercial Code to determine that Consolidated, and subsequently Bartlett, acted in bad faith in the loading and the application of the barge in dispute.

Farmland contended that Consolidated, and subsequently Bartlett, should have known that a corn barge loaded after the close of the river would encounter a lengthy delay in its arrival at its final destination and was thus "doomed" to deteriorate in quality. Farmland further contended that Consolidated, in knowing that the corn would encounter long delays, and subsequently Bartlett, acted in bad faith by failing to provide a barge equipped with proper aeration devices to prevent deterioration of the corn.

The flood of 1993 was unlike anything previously experienced by the industry. The arbitrators believed it was not reasonable at the time of application to expect that anyone could foresee the extended amount of time that the river would be closed to traffic and the long delays in unloading subsequently encountered at the Gulf. After application, and as delays became more apparent, Farmland had control of the barge and the right to seek alternative destinations other than the Gulf under NGFA Barge Trade Rule 5, Reconsignment/Diversion.

Contrary to its contention, Farmland failed to demonstrate that the corn loaded on Barge VLB 7261 was knowingly "doomed" at the time of application to incur quality deterioration before being unloaded at its final destination. The quality of the corn applied was within contract specifications and was loaded on a barge of the type commonly used by the industry for transport of grain. The quality of the corn was such that it traditionally has held grade during transport without aeration.

Barring prior contract cancellation or amendment, Bartlett was obligated to apply barges within the terms of the original contract. The arbitrators believed that Farmland should have expected application within the parameters set by the contract. Documents provided to the arbitrators showed that on July 14, 1993, Bartlett pur-

chased a quantity of corn equal to its sale to Farmland. Bartlett used at least one barge of that purchase to cover the previous sale to Farmland. Since Bartlett's purchase was made well into the time frame when Farmland contended that long delays were foreseeable, the arbitrators believed that Farmland missed an opportunity to exercise foresight by not attempting to cancel or renegotiate the shipment period of its purchase contract with Bartlett. Farmland did not provide the arbitrators with any statements or documents showing that such an attempt was made.

No documents or statements were provided that indicated that after accepting application, Farmland attempted to divert Barge VLB 7261 to another location for an earlier unload or that Farmland attempted to monitor the condition of the grain prior to its arrival in New Orleans six and one-half weeks after the date of application.

In contending that Consolidated and Bartlett acted in bad faith, Farmland's complaint appears to hold Consolidated and Bartlett to a higher standard of foresight than that demonstrated by the industry as a whole or by what Farmland's own inactions indicated that it set for itself. At the time of application, all parties were equally knowledgeable about river conditions and nothing was presented to the arbitrators that would indicate that Farmland raised any objections or concerns at that time. After application, only Farmland had the right to act to prevent future quality deterioration.

The arbitrators disagreed with Farmland's contentions that Consolidated and/or Bartlett acted in bad faith in loading and applying Barge VLB 7261. The arbitrators agreed that NGFA Barge Trade Rule 10 is applicable with title, as well as the risk of loss and/or damage, passing from Consolidated to Bartlett to Farmland upon the application of Barge VLB 7261.

Therefore, the arbitration committee unanimously found for the defendants in each case. No damages or related costs were awarded.

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

Roger Caffrey, Chairman
Director of Grain Operations
M.F.A. Inc.
Columbia, Mo.

Shawn McCambridge
Grain Merchandiser
Corn Products Division,
CPC International Inc.
Chicago, Illinois

Steve Nail
Executive Vice President
Farmers Grain Terminal Inc.
Greenville, Miss.