Arbitration Decision
National Grain and Feed Association

April 7, 1999

Arbitration Case Number 1854

Plaintiff: Powe Farms Inc., Bernie, Mo.

Defendant: Louis Dreyfus Corp., New Madrid, Mo.

Statement of the Case

This dispute involved the sale of 295,000 bushels of yellow corn and 15,000 bushels of milo by the plaintiff, Powe Farms Inc. (Powe) to the defendant, Louis Dreyfus Corp. (LDC), between January and May 1996.

The corn was committed for delivery through 11 separate contracts with delivery periods between Aug. 15 and Sept. 20, 1996. The milo was covered by one sale made on May 30, 1996, for shipment Sept. 1-15, 1996. Seven of the 11 corn contracts specified discounts for late delivery. The other four were silent on this subject. The sole milo contract denoted a penalty for late delivery. LDC issued contracts that were accepted and signed by Powe. Powe chose not to issue contracts of its own. All contracts issued by LDC stipulated that the Trade and Arbitration Rules of the NGFA would govern where not in conflict with the contract terms. [See Schedule I.]

The dispute arose when Powe began deliveries on Aug. 26, 1996 and experienced unloading delays of more than five hours during several of the days during the contract period. Powe argued that LDC's alleged inability to receive grain in a timely manner was the sole cause of its failure to make deliveries during the shipment periods stated in the contract, and resulted in discounts being assessed by LDC. Powe argued that LDC was responsible for, and could have prevented, the assessment of discounts. After delivering 127,641.80 bushels of corn, Powe stopped deliveries totally on Sept. 20, even though LDC extended five contract periods until Sept. 22.

Powe claimed damages totaling $75,249.88, which consisted of: 1) $17,449.88 in discounts assessed by LDC, which Powe alleged were improperly assessed; and 2) a $57,800 award for differences between market price and contract price. To calculate the market differences, Powe used a market price of $3.01 per bushel, but presented no rationale for that figure nor the date and market used. LDC canceled the defaulted contract balances at contract prices.

The Decision

The arbitrators found that this dispute was actually comprised of three parts:

- Whether there was a default on the part of the supplier (Powe) on grain not shipped and, if so, what market differentials should apply?
- The validity of the late shipment discounts assessed against grain shipped on the seven contracts that incorporated such penalties; and
- What, if any, penalties should be applied to grain shipped on contracts that did not specify a late-shipment discount?

In arriving at their decision, the arbitrators noted that each party had a shared obligation in honoring the conditions of the contracts. The arbitrators also concluded that Powe should have made a better effort to effect deliveries in a more timely fashion. Conversely, the arbitrators believed LDC could have made adjustments in its receiving schedule to better accommodate the quantities of grain it had contracted to purchase. Once it became clear that a real problem existed, an equitable solution should have been aggressively pursued by both parties, as is clear from both the letter and spirit of NGFA Grain Trade Rule 10.

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The arbitrators concluded that LDC (the buyer) made an attempt to comply with NGFA Grain Trade Rule 10 when it gave Powe adequate notice of default on corn contract numbers 356078, 356174 and 356563 on Sept. 27, 1996. Moreover, LDC waited until Oct. 29, 1996 to give the same notice of default on corn contract numbers 356019 and 355994.

Based upon the evidence submitted, the arbitrators determined that the Sept. 27 notification by LDC represented defaulted bushels of 98,080.71 and the Oct. 29, 1996 notification covered 64,277.49 bushels. Neither party submitted any evidence in this case that a declaration of default was ever issued on corn contract number 356251 for 5,000 bushels, or on the milo contract for 15,000 bushels. In the absence of any evidence to the contrary, and without a substantiated claim for damages on these two contracts, the arbitrators concluded that these transactions were written off by each party at contract price without penalty. Based upon the information supplied, the arbitrators determined the open corn contract bushel balances should be canceled at a fair market value of $3.26 per bushel on Sept. 27 and $2.81 per bushel on Oct. 29, 1996. The weighted average price for the contracts represented in the Sept. 27 notification was $3.4706 per bushel, while the Oct. 29 notification was $3.3640 per bushel. The market differences calculated were $0.2106 per bushel on 98,080.71 bushels and $0.5540 per bushel on 64,277.49 bushels, resulting in a total of $56,265.53. [See Schedule II].

Seven of the contracts specified the discounts that would be assessed for deliveries made beyond the initial contract delivery period. By confirming the contracts, the seller was aware that the time of delivery had defined costs. Therefore, timeliness was essential and any delay in deliveries would incur a discount.

The evidence showed that LDC assessed a 38-cent-per-bushel discount on contract number 356554 that was not initially disclosed when the contract was written. Likewise, without documentation of the prevailing market inversion or any evidence of mutual agreement, the arbitrators could not verify the validity of discounts on contracts that did not address the issue. This lack of documentation on the part of LDC and silence in four of the original contracts as to a discount for late deliveries led the arbitrators to determine that it would be inappropriate to uphold LDC's unilateral assessment of discounts on these contracts.

The arbitrators also found that Powe had justified some of the claimed market differences on the canceled contract balances.

The Award

Powe Farms Inc. was awarded a judgment in the amount of $63,865.53 against Louis Dreyfus Corp. The judgment consisted of market differences of $56,265.53 (see Schedule II) and reimbursement for a contract discount for $7,600 (see Schedule I). Interest shall not be owed on this amount provided it is paid by Louis Dreyfus Corp. within 15 days of its receipt of this decision. Thereafter, compound interest on the judgment shall accrue at the rate of 10 percent per annum.

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

Dan Miller, *Chairman*
ADM/Countrymark LLC
Indianapolis, Ind.

Jay O'Neil
Bartlett and Co.
Kansas City, Mo.

Byron Ulery
Farmway Co-op Inc.
Beloit, Kan.

Schedule I
Powe Farms Contracts List

Corn Contracts

Contract Date	Contract Number	Commodity	Quantity	Price US $	Shipment Period	Remarks
1/03/96	0355994	Yellow Corn	50,000 BU	3.35000	8/15/96 - 9/15/96	
1/05/96	0356019	Yellow Corn	15,000 BU	3.41000	8/15/96 - 9/07/96	
1/12/96	0356078	Yellow Corn	10,000 BU	3.30000	8/15/96 - 8/31/96	Any corn delivered Sept. 1-20 will be paid at 3.17
1/26/96	0356174	Yellow Corn	50,000 BU	3.33000	8/15/96 - 9/20/96	
2/07/96	0356251	Yellow Corn	5,000 BU	3.58000	8/15/96 - 8/31/96	14 CT/BU discount for Sept. 1-20 delivery, additional 20 CT/BU discount for Sept. 21-30 delivery

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3/15/96	0356554	Yellow Corn	20,000 BU	3.73000	8/15/96 - 9/07/96	LDC discounted PFI 38 cent per bushel/ 20,000 bushels or $7,600 for late delivery on this contract
3/18/96	0356563	Yellow Corn	85,000 BU	3.70000	8/15/96 - 9/07/96	Sept. 7-20 delivery pay at 13 cent discount
5/03/96	0356949	Yellow Corn	20,000 BU	3.98000	8/15/96 - 9/07/96	Corn delivered Sept. 8-16 pay @ 16 cent discount, corn delivered Sept. 16-30 pay @ 30 cent discount
5/14/96	0357035	Yellow Corn	10,000 BU	4.46000	8/15/96 - 8/31/96	Corn delivered FH Sept. pay @ 16 cent discount, corn delivered LH Sept. pay @ 32 cent discount
5/20/96	0357069	Yellow Corn	25,000 BU	4.44000	8/15/96 - 8/31/96	Corn delivered FH Sept. pay @ 16 cent discount, corn delivered LH Sept. pay @ 32 cent discount
5/30/96	0357106	Yellow Corn	5,000 BU	4.15000	9/01/96 - 9/15/96	Corn delivered LH Sept. pay @ 18 cent discount

Total Quantity of Corn Contracts: 295,000 bushels

Milo Contract

Contract Date	Contract Number	Commodity	Quantity	Price US $	Shipment Period	Remarks
3/18/96	0356564	Yellow Grain Sorghum	15,000 BU	3.34	9/01/96 - 9/15/96	23 CT/BU discount for LH Sept. delivery

Schedule II

1. Sept. 27, 1996

Contract Number	Contract Price	Bushels (per bu.)	Extended
356078	$3.30	10,000.00	33,000
356174	3.33	50,000.00	166,500
356563	3.70	38,080.71	140,899
Total		**98,080.71**	**340,399**

Weighted Average $3.4706
Fair Market Value 3.2600
Market Difference 0.2106
Extended Amount $20,655.80

2. Oct. 29, 1996

Contract Number	Contract Price	Bushels (per bu.)	Extended
355994	$3.35	49,227.49	165080
356019	3.41	15,000.00	51150
Total		**64,277.49**	**216,230**

Weighted Average $3.3640
Fair Market Value 2.8100
Market Difference 0.5540
Extended Amount $35,609.73

3. **Total Market Difference:** $20,655.80 + $35,609.73 = $56,265.53

Arbitration Appeals Case Number 1854

Appellant: Louis Dreyfus Corp., New Madrid, Mo.

Appellee: Powe Farms Inc., Bernie, Mo.

The Arbitration Appeals Committee, individually and collectively, reviewed all the evidence submitted in this case. It also reviewed the findings and conclusion of the original arbitration committee.

In examining the various contracts between the two parties, the Appeals Committee could not find any terms of the contracts that required Powe to deliver any specific quantity on a daily basis or, on the other hand, any terms that required LDC to receive a certain quantity on a daily basis.

If the buyer and seller agree to specific terms that are different than the normal standards or customs of the trade, these terms must be made part of the contract (i.e., that a specific number of bushels could be delivered using a certain number of trucks on a daily basis, or that the truck waiting lines would not exceed a certain time frame.)

Unless so stated in the grain contract between the parties, the receiver of the grain is under no obligation to unload a given number of bushels in any single day.

It could not be ascertained from the information submitted in this case whether LDC had booked greater quantities of grain for delivery over the time periods referenced in the contracts than the facility had the capability to receive. Regardless, the receiver should make a good-faith effort to receive the grain it has purchased during the time periods for which the grain was purchased. In this situation, LDC did increase to seven-day-a-week operations and extended daily receiving hours.

The seller of grain should make a good faith effort to deliver the bushels contracted over the course of the delivery period. Unless made part of the contract, it would be erroneous for the seller to believe it could expect to deliver substantial quantities to the receiver over a short time to the exclusion of others that also have contracted to deliver to the specific facility for similar time periods.

It is a recognized fact that almost all grain-receiving facilities experience in-bound truck lines of varying lengths during busy times, especially at harvest. During these busy periods, it is imperative that the buyer and seller work with one another, to the extent possible, to maximize the amount of grain that the seller can deliver, and that the receiving facility can unload.

On a different matter arising from this case, when two parties enter into a grain contract for future delivery and it comes time to perform on the contract, it makes no difference what the contract price is relative to the current market price for the particular commodity; both parties are obligated to perform on their agreed-to contract.

As the original arbitration committee found, all of the contracts were not performed on in a timely manner. Further, the Arbitration Appeals Committee strongly endorsed the original arbitration committee's statement "that each party had a shared obligation in honoring the conditions of the contracts."

When it became known that some of the contracts were not fully performed, all of these contracts should have been referred to one of the terms of NGFA Grain Trade Rule 10—Incomplete Shipment or Delivery.

The Decision

The Arbitration Appeals Committee agreed with the original arbitration committee in that LDC did assess a 38-cent-per-bushel discount on contract number 356554 for 20,000 bushels. This discount was never agreed to, nor was the contract amended in writing. Therefore, the 38-cent-per-bushel discount on 20,000 bushels – or $7,600 – is to be returned to Powe.

Schedule A

Contract Number	Commodity	Quantity (Bushels)	Price	Last Possible Shipment Date	Cancellation Price	Cancellation Difference
035594	Corn	49,277.49	3.35	9/15/96	3.24	$5,420.52
0356019	Corn	15,000.00	3.41	9/7/96	3.53	(1,800.00)
0356078	Corn	10,000.00	3.17	9/20/96	3.33	(1,600.00)
0356174	Corn	50,000.00	3.33	9/20/96	3033	0
0356563	Corn	38,080.70	3.57	9/20/96	3.33	9,139.37
0356251	Corn	5,000.00	3.24	9/30/96	3.14	500.00
0356564	Milo	15,000.00	3.11	9/30/96	2.86	3,750.00
Market Damages Due Powe Farms						$15,409.89

While the Arbitration Appeals Committee agreed with the direction of the decision of the original arbitration committee, it determined that all contracts not fully performed should be brought to market based upon the close of the market the next business day. In all cases the business day after the last day that each contract could possibly be performed was used. In two instances, as compared to the original decision, the Appeals Committee used, as per the contract in question, the latest possible shipment period on the contract with the corresponding discounted contract price.

In bringing the contracts to market, prices used were those submitted by Powe, which had obtained the prices from Cargill Inc. LDC furnished no evidence or supporting schedule showing any other prices, but merely questioned the form in which Powe had submitted its prices. Considering LDC's silence on the validity or lack of validity for these prices, the committee had no other facts available upon which to base the cancellation prices.

As per Schedule A, the Appeals Committee calculated an additional $15,409.89 owed Powe.

Therefore, the Arbitration Appeals Committee awarded Powe Farms Inc. a total of $23,009.89, plus 10 percent interest.

Submitted with the consent and approval of the Arbitration Appeals Committee, whose names are listed below:

John McClenathan, *Chairman*
Vice President, Grain Marketing
GROWMARK Inc., Bloomington, Ill.

Donald Cameron
Chairman
Cameron Brokerage Co.
Charlotte, N.C.

Edward P. Milbank
President
Milbank Mills Inc.
Chillicothe, Mo.

Thomas Hammond
Senior Vice President
Columbia Grain Inc.
Portland, Ore.

Steve Nail
President and Chief Executive Officer
Farmers Grain Terminal Inc.
Greenville, Miss.