

Arbitration Case Number 1517

Plaintiff: The Bunge Corporation, New York, New York

Defendant: Harold V. Tucker, Mer Rouge, Louisiana

May 28, 1975

Statement of the Case

The dispute arose over a contract entered into on August 11, 1972, between the two parties over 4,000 bushels of soybeans to be delivered by the Defendant, Harold V. Tucker, during October/November 1972 to the Plaintiff, Bunge Corporation grain elevator at Avert, Missouri.

The terms of the original contract were well defined and partial deliveries were made in October and November 1972.

The Plaintiff on November 27, 1972 wrote letters from its Cairo, Illinois, office extending its undelivered October/November soybean contracts for 60 days. In this case, the Defendant's contract (No. 1829) had an undelivered balance of 3,191 bushels at the end of November 1972. The parties apparently had no differences in the extension as regular deliveries were being made in December and January until January 9 and 10, 1973.

On January 9, 1973, the Defendant attempted to deliver soybeans that were not within the specifications of the contract. Again on January 10, 1973, the Plaintiff viewed and discussed with the truck driver a sample of soybeans at the Avert, Missouri, elevator that, in the Plaintiff's judgment, was lower quality than originally contracted.

No further deliveries were made to the Plaintiff's elevator, even though the Defendant sold and delivered soybeans during January 1973 to another local elevator. The Plaintiff attempted to extend the undelivered portion of the contract an additional 60 days on January 31, 1973, and the Defendant claims no knowledge of this extension.

The Decision

The complaint raises several pertinent questions:

Query 1: The Plaintiff's (Bunge Corporation) right to reject grain of grade below contract grade and to cancel, without notice, that portion of the contract not filled within the contract period.

Arbitration committee decision: It clearly is within Bunge's contractual right to refuse delivery of poor quality grain, grading outside of specifications outlined in the contract.

Query 2: Agent/Principal Relationship. The trucker's discussion concerning deliveries and intentions of the Defendant.

Arbitration committee decision: Trade customs and practices indicate truck drivers delivering grain cannot be presumed agents for the principal. Buyer should have made prompt inquiries directly with the Defendant to ascertain its (the Defendant's) intentions.

Query 3: Anticipatory Breach.

Arbitration committee decision: At the time of the refusal of the delivery on January 9 and again on January 10, 1973, the Plaintiff should have had reasonable doubt that there may be no further deliveries and that the Defendant intended to breach the contract. Prudent actions should have been taken to contact the Defendant and advise it of its (Bunge's) intentions to cancel, extend and/or negotiate the disposition of the undelivered portion of the contract. Similarly, the Defendant was aware of its difficulty to effect deliveries and should have contacted the Plaintiff to arrange cancellation, extension, etc.

Summary: Neither party acted in a responsive manner to resolve their differences when they first became known: The buyer to repudiate the contract or protect itself in the marketplace nor the seller to make positive notice of intention to breach and negotiate settlement even though it continued to sell and deliver soybeans that would have satisfied the terms of contract No. 1829. The status of the second extension is unclear. Notice was sent by the

Plaintiff with no acknowledgment of receipt by the Defendant. But this was irrelevant, as prior action to cancel should have been taken by January 31, 1973.

Findings and Conclusions

It is the unanimous finding of the arbitration committee that the Defendant, Harold V. Tucker, did breach contract No. 1829. The Defendant should pay the Plaintiff, Bunge Corporation, the market differential between the contract price on the undelivered portion of the contract and the closing price of soybeans on the last delivery date of the first contract extension or January 31, 1973. The award should not include consideration of interest or costs of the proceedings.

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

Ronald E. Pratt, Chairman

The Early & Daniel Company, Cincinnati, Ohio

Gerald D. Frazier

Union Equity Cooperative Exchange, Enid, Oklahoma

John W. McCulley

Oakville Feed & Grain Inc., Oakville, Iowa