



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

November 4, 1980

ARBITRATION CASE NO. 1553

PLAINTIFF: Landmark, Inc., Columbus, OH

DEFENDANT AND

CROSS-PLAINTIFF: The Early & Daniel Company, Inc., Cincinnati, OH

CROSS-DEFENDANT: Cargill, Inc.

- FACTS: (1) Plaintiff sold a 100-car trainload of soybeans for October, 1979 shipment to Defendant FOB Plaintiff's elevator.
- (2) Defendant had previously sold a like amount of soybeans to Cross-Defendant. Same shipment FOB Ohio rate base.
- (3) All parties agreed to the basic terms of the contract.
- (4) All parties to the contract agreed that all the cars designated to pick up the soybeans at Plaintiff's elevator did not arrive in time to satisfy the 'time of shipment' as noted in the contract.
- (5) Cross-Defendant agreed to hold Defendant harmless of any late charges providing Cross-Defendant and Plaintiff agreed as to the amount of such late charges.
- (6) By their action (Plaintiff in loading the cars after October 31st and Cross-Defendant by placing cars after October 31st) both parties agreed to an extension of the contract.
- (7) As evidenced by the exhibits, in TWX form, forwarded to each other during the period of October 26th through November 6th, 1979, the only disagreement was in the amount of 'late charges.' By their action, all parties agreed to some as yet unidentified cost for late shipment.

The committee found no merit to Cross-Defendant's after-the-fact references to any force majeure situation and felt that offers and counteroffers to settle damages within a few days after the contract was executed, clearly demonstrated a recognized responsibility that some charges were indeed due the Plaintiff.

(over)

The committee found no evidence that the train was not ready to load on November 1st. Charges as assessed by the Plaintiff do not appear excessive in circumstances at the time, but should be due for one day rather than two as claimed by the Plaintiff.

Therefore, the committee found in favor of the Plaintiff against the Defendant, and for the Cross-Plaintiff against the Cross-Defendant in amount of \$16,964.03.

/s/ Robert S. Cartmill, Chairman  
Lincoln Grain Inc.  
Lincoln, NE

/s/ John P. Doherty  
Growmark, Inc.  
Chicago, IL

/s/ M.J. Eberts  
Peavey Company  
Minneapolis, MN

RSC/Jlg