NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

August 19, 1982

Arbitration Case No. 1580

Plaintiff: Bunge Corp., Logansport, Indiana
Defendant: Bunker Hill Farm Service, Bunker Hill, Indiana

Chronology of Events, Reported Facts and Basis of Complaint

Both the Plaintiff (Bunge Corp.) and the Defendant (Bunker Hill) agreed that a contract was consumated between the two parties for the delivery of 150,000 bushels of soybeans (unpriced basis the November futures) from Bunker Hill to Bunge at Logansport for October-November, 1979.

Both parties agreed, during the life of the contract, to cancel 15,000 bushels (a 10,000 and a 5,000 bushel lot) of the contract with subsequent contractual arrangement for the same quantity by a firm (Amboy Grain Company) with the same ownership as Bunker Hill to be delivered to Bunge at Logansport for the same period ending (November 30, 1979).

Both parties agreed that during October, 1979, a phone conversation between the Commercial Manager of Bunge and the President of Bunker Hill did take place wherein Bunker indicated that a potential problem could exist for timely contractual completion due to Bunge's reduced truck dump hours and Bunge indicated that additional time could be allowed for delivery.

On October 31, 1979, the two parties agreed to roll the 65,000 bushel open and unpriced balance to the January futures at the then current spread.

During November, 1979, 45,000 bushels were either cancelled (discussed above) or priced and delivered. Thus, on November 30, 1979, (the last day of the contract) 20,000 bushels remained open and unpriced.

On December 14, 1979, 1,327 bushels were delivered and priced leaving an open balance of 18,673 bushels which became the basis of the dispute. On January 3, 1980, the Plaintiff (Bunge) wrote an extension to the original contract to January 30, 1980.

On February 12, 1980, Bunge confirmed in writing to Bunker Hill that as of that date, they were willing to settle for one-half of the reported loss ($3,875.00).

Claim and Counterclaim

The Plaintiff, Bunge Corp., sought an arbitration award of $7,702.61 (the difference between the original contract basis and cancellation basis) with interest from February 28, 1980, (cancellation date) plus arbitration fees.

The Defendant, Bunker Hill Farm Service, denied the above claim and sought a counterclaim in the amount of $4,855.00 plus interest and arbitration fees. Bunker Hill contended that Bunge's Logansport facility was unable (due to reduced hours of operation) to accept the contracted soybeans congruent with Bunker Hill's needed delivery schedule necessitating delivery to another destination (Kokomo Grain Company, Kokomo, Indiana) of 22,333 bushels. The beans delivered to Kokomo were contracted under a delayed price program. The subsequent pricing which differed from the original contract price delivered Bunge was the basis for the counterclaim.

Opinion

The Arbitration Committee, after having reviewed the reported facts surrounding the dispute, rendered the following decision and explanation.

It was apparent that both parties allowed a somewhat loose structure to develop in the chain of events. The contract basis should have been rolled to the March futures on or before January 1, 1980, by mutual consent (Grain Trade Rule 30). A written confirmation of extension at the end of November was not prepared even though the buyer (Plaintiff) indicated prior to contract expiration that, should it be necessary, an extension would be allowed. It should have been evident after the January 3, 1980, extension to January 30, 1980, with no deliveries that the seller (Defendant) was not going to complete the contract, i.e., the buyer (Plaintiff), by the exercise of due deligence, could have determined whether the seller had defaulted (Grain Trade Rule 11). The Plaintiff stated in the February 12, 1980, correspondence that a settlement for one-half of the calculated loss would be acceptable. The calculation used to indicate the loss was a January-March futures spread of 22¢ per bushel. However, the January option had expired the previous January 22nd and no record of earlier attempts to spread the contract forward were presented. The spread the last day of trading for the January futures was 10¢ per bushel.

Based on the above explanation, the Arbitration Committee found for the Plaintiff. However, because of the manner with which the Plaintiff exercised due diligence the amount awarded was $3,875.00 plus interest at a rate of 16.5% from February 12, 1980, to settlement date less 60 days (approximate time period for arbitration proceedings).

The Defendant's counterclaim was denied.

/s/ Tom D. Couch, Chairman
The Early & Daniel Company, Inc.
Cincinnati, Ohio

/s/ Richard Neet
Rocky Mountain Brokerage
Greeley, Colorado

/s/ Howard Wright
Baltic Mills, Inc.
Vincennes, Indiana