



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

March 31, 1983

Arbitration Case Number 1591

Plaintiff: FAR-MAR-CO Inc., Kansas City, Missouri.

Defendant: American Grain & Related Industries (AGRI) Inc.,
Des Moines, Iowa

Statement of the Case

This trade dispute involved the proper application of Grain Trade Rules 10 and 11 concerning late shipment of a sale by the Defendant, AGRI Industries Inc., of 260,000 bushels (75 cars) of U.S. No. 2 yellow corn for April 1982 shipment price basis Gulf export to FAR-MAR-CO, the Plaintiff.

On or about noon on Friday, April 30, 1982 -- the last day of the month -- AGRI Industries informed FAR-MAR-CO that it would not be able to fill its contract within the time period of the contract. This notification was made by telephone.

Later that same afternoon, FAR-MAR-CO notified AGRI Industries by telex of the following alternatives:

-- That the contract would be extended to the next business day -- Monday, May 3, 1982 -- at a 10-cents-per-bushel discount to the contract price and then if delayed further, 5 cents per bushel for each additional day;

or

-- Wash out the existing contract at 20-cents-a-bushel cancellation charge to AGRI Industries.

FAR-MAR-CO asked, "which alternative do you choose to accept?"

AGRI Industries responded by telexing:

"Per telephone conversation April 30, 1982 (4:30 p.m.) AGRI will tender one Gulf train on our sale (260,000 bushels), May 3, 1982, for your billing instruction. This is per Rule 11 NGFA Trade Rules."

FAR-MAR-CO then responded by telex: "We will accept application of your train on Monday ... however, we do not accept your definition of Rule 11."

No evidence was submitted by the Defendant of any attempt or effort on its part to fulfill its market obligation to the Plaintiff elsewhere in the marketplace.

The Plaintiff claimed an arbitration award of \$26,000 plus costs and interest, although no invoice from FAR-MAR-CO to AGRI for that amount was submitted to this arbitration committee.

The Defendant, AGRI Industries Inc., argued that monetary damages be denied, and that the costs be assessed against FAR-MAR-CO.

The Decision

The arbitration committee believed that both the Plaintiff and the Defendant were in part mistaken in their application of Grain Trade Rule 11 (or Rule 10). AGRI Industries Inc. intended to force an extension to the life of the contract through the 24-hour provisions of Grain Trade Rule 11, Incomplete Delivery -- Contracts Made Subject to Specified Time of Delivery. AGRI Industries should not expect to be able to extend the contract by 24-hours (in this case 72 hours) by waiting until the last day to notify the buyer. Grain Trade Rule 11 states: "The 24-hour notice period provided shall in no way extend the life of the contract."

In addition, the pertinent section of Grain Trade Rule 11 provides that:

"When the seller finds that he will not be able to complete a contract for delivery within the agreed limit, it shall be his duty at once to advise the buyer by telephone or telegraph, whereupon it shall be the duty of the buyer at once to elect either to (a) agree with the seller upon an extension of the contract;..."

There was no evidence of any agreement on the part of AGRI Industries Inc. to extend the contract at a 10-cent-per-bushel discount, or that FAR-MAR-CO, after receiving no agreement on (a) above, exercised its option under (b) and (c) of the same paragraph of Grain Trade Rule 11.

The arbitration committee unanimously found in favor of FAR-MAR-CO, but at a reduced basis from its request by awarding 2 cents per bushel (a total of \$5,200) as a measure of the market difference between April 30 and May 3, 1982 shipment time. No interest was awarded.

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

Marshall Faith, Chairman
Scouler-Bishop Grain Company, Omaha, Nebraska

William Palmer
Terminal Grain Corporation, Sioux City, Iowa

Dale Salonen
Bunge Corporation, Minneapolis, Minnesota