



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

September 1, 1983

Arbitration Case Number 1597

Plaintiff: Metamora Elevator Company, Metamora, Ohio

Defendant: Cargill Inc., Minneapolis, Minnesota

Statement of the Case

The case concerned a Chessie System unit grain train involved in a string trade. All parties agreed to allow the shipper of the unit -- Metamora Elevator, the Plaintiff -- and the receiver -- Cargill Inc., the Defendant -- to arbitrate the disputed issue. The dispute involved the Defendant's use of official appeal grades as final settlement of the unit train shipment instead of the "first official grade," which was the contractual term used on each confirmation.

The Chessie System unit train (B&O 44-26) was loaded by the Plaintiff on August 17, 1982 and released to the carrier. The Plaintiff stated that the grade certificates and loading documents were delivered to the Defendant's office on the morning of August 18, 1982, several hours after the train was loaded and removed by the carrier.

The Defendant, after reviewing the grade certificates, decided to appeal the grades. The official appeal grades, based upon mutual contract terms, resulted in additional shipper discounts of \$2,977.39.

The Plaintiff claimed \$2,977.39 predicated upon the fact that the Defendant did not have the right to call for an official appeal. The Plaintiff asserted that Regulation 800.136 (d) of the U.S. Grain Standards Act, as amended, contained certain filing requirements for a request for an official appeal inspection. One of those requirements states that a request shall be filed before the grain or container has left the specified service point where it was located when the original official inspection service was performed.

The Defendant denied the claim without disputing the content of the above regulation. The Defendant contended that application of the Federal Grain Inspection Service regulations should be accurate, fair and impartial with respect to each party to a transaction, and that both parties (buyer and seller) should have equal access to the official appeal inspection process.

The Defendant suggested that the Plaintiff's presentation of the official grade certificates after having released the unit train to the carrier for movement placed the buyer in a disadvantageous position concerning the intent of the regulation.

The Decision

The arbitration committee, after individually reviewing all documents submitted by both parties, concluded that the key issue in the case was whether the Defendant had the right to call for an official appeal inspection on the first official grade.

Both the buyer and seller should have equal right to the FGIS appeal process, with neither party having a distinct advantage or disadvantage. In the above case, FGIS did not dismiss the Defendant's request for the official appeal inspection. The committee agreed that since the request was not dismissed, FGIS had determined that the Defendant had met all filing requirements concerning its interpretation of the regulations. The official appeal inspection certificates were issued canceling and superceding the original official grade certificates. Therefore, only one official grade existed for each sampled lot.

The committee also believed that the Plaintiff's presentation of the loading documents, including the original official grade certificates subsequent to the unit train removal from the loading site, placed the buyer (Defendant) in a disadvantageous position.

The Award

The arbitration committee unanimously found in favor of the Defendant, Cargill Inc. The disputed amount, \$2,977.39, had been deducted in the final settlement by the Defendant with the Plaintiff's payment in protest; thus no additional monetary transaction was required.

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

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

Greg Muench
Farmers Export Company
Kansas City, Missouri

Raymond L. Ortman
Kokomo Grain Company Inc.
Kokomo, Indiana