



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

October 13, 1983

Arbitration Case Number 1599

Plaintiff: Louis Dreyfus Corporation, Stamford, Connecticut

Defendant: Rush County Grain Inc., Rushville, Indiana

## Statement of the Case

This case was filed by the Plaintiff, Louis Dreyfus Corporation, following the Defendant's filing of a suit in federal court. (The suit has been stayed pending arbitration.) The dispute involved a 65-car unit train of corn purchased by Louis Dreyfus Corporation from Rush County Grain Inc. through American Grain Brokerage Inc. for shipment by September 12, 1980. The grain, approximately 227,500 bushels, was purchased by Louis Dreyfus F.O.B. Indiana, loaded at Rushville, first official grades. According to the contract, the grain was to contain on average no more than 15 percent moisture, 4 percent damage, 4 percent foreign material, and have a minimum test weight of 54 pounds. As often is customary, some of the cars loaded could contain grain of lower quality, but the factor average was not to conflict with the above-specified levels.

Rush County Grain did not contest that it failed to load the type of corn required in the contract. An examination of the origin grades revealed that the rail cars' contents graded anywhere from No. 2 yellow corn to sample grade yellow corn. Some of the sample grades were due to damaged, sour or weevily kernels.

Since there was no dispute that the corn did not meet contract specifications, the key question then became whether Louis Dreyfus accepted the corn on contract either by lack of decision, implication or subsequent action.

Rush County Grain contended that Louis Dreyfus accepted the corn on contract and that Rush County Grain should have been subject only to discounts for off grades because of Louis Dreyfus' knowledge of the corn's condition prior to the cars release to the railroad. Any subsequent delay in redirecting the train should have been for the account of the buyer, Rush County Grain contended.

Louis Dreyfus proceeded to sell the damaged corn to Continental Grain Company, Norfolk, Virginia, at +5 cents December delivered Norfolk. Rush County Grain further contended that a delay by Louis Dreyfus concerning what to do with the corn involved in the shipment resulted in an additional freight cost which was charged to Rush's account when the final accounting was made.

The contract was not amended under the clauses of Grain Trade Rule 41, which stated in part: "...any alteration mutually agreed upon between the Buyer and Seller must immediately be confirmed by both in writing."

Louis Dreyfus denied accepting the corn against the contract. It stated it did not give written or oral acceptance and invoked Grain Trade Rule 19, which states: "Grain sold for delivery, origin inspection, shall be covered by an Inspection Certificate of the grade contracted. When grain is being applied that is not in accordance with the contract, it shall be the duty of the Seller to notify the Buyer at the time of application, by telephone or wire if the grade is not available at the time of application, immediately by telephone or wire from the date of grade certificate. The Buyer will then advise the Seller as to whether he can accept the car and/or at what discount. The submission of a certificate of a lower grade to apply on a contract for a higher grade shall be authority for the Buyer to sell the grain represented by such certificate for the account of whom it may concern and proceed to buy in, extend or cancel the original contract for the account of the Seller notifying him the same business day of such action."

Rush County Grain questioned the following penalties regarding the settlement:

- \$52,504.93: Damage discounts deducted by the Louis Dreyfus, which were the same discounts Louis Dreyfus received when the grain was sold to a third party.
- \$29,000: Discovery data revealed that the gross amount received by the Plaintiff was some \$29,000 more than the amount used in the computation of settlement between Louis Dreyfus and Rush County Grain.
- \$76,744: Discovery data also revealed that Louis Dreyfus deducted the published tariff, three-car rates to Rushville from Willard, Ohio, where the train was stopped awaiting final disposition.
- \$82,827.37: Published export rates from Willard, Ohio to destination at Norfolk, Virginia. The paid freight bills provided by the railroad reflected only the amounts normally charged in a like private car movement.
- \$3,846: Rush County Grain also objected to the detention charge of \$15 per day for four days for 65 cars.
- \$37,881.77: A 17-cent-per-bushel differential that would represent the difference in replacing No. 2 yellow corn versus the high damaged corn shipped against the contract.

#### The Decision

The arbitrators did not accept Rush County Grain's contention that Louis Dreyfus had accepted off-grade corn on the contract because it had complete knowledge of the train load grading factors prior to release of the cars to railroad. This contention also was contrary to sworn testimony as to the sequence and flow of information and the issuance and receipt of official grades from the licensed grain inspection agency.

In addition, acceptance of off-grade corn was contrary to logic, since Louis Dreyfus' underlying sales contract called for high quality corn to be loaded on a vessel at its Baltimore elevator. Further, the company had paid a premium at the time of purchase for this quality.

Several of the sworn statements were disputed by Rush County Grain. The arbitration committee did not make a judgment as to Rush County Grain's claim of inaccuracy of the several depositions and sworn statements.

The arbitrators found that Louis Dreyfus mitigated Rush County Grain's damages to the best of its ability under trying circumstances.

It was clear that Rush County Grain did not follow the Trade Rules prescribed by the National Grain and Feed Association, and in particular that portion of Grain Trade Rule 19 which places upon the seller the obligation to not only notify the buyer that the grain is below contract specifications as being applied against the contract, but also to acknowledge by receipt its concurrence that the grain shipped is acceptable. Acceptable means not only from the viewpoint of being applicable, but that both parties have agreed to the discounts to be applied to that part of the shipment that is below contract specifications.

The arbitrators found that Louis Dreyfus did not, in fact, accept the shipment as made through any delay or subsequent action.

Specifically regarding the debit/credit memo itself:

- It is usual and customary in the grain trade to charge the published tariff rate when accounting to customer for freight charges, even though private- leased or owned cars are used.
- The delay of one day to find a buyer for the type of corn shipped is, in the arbitrators' opinion, not unusual. The committee believed Louis Dreyfus acted prudently in stopping the train at Willard, Ohio.
- Louis Dreyfus charged a three-car domestic multi-car rate from origin to Willard, Ohio, and the export rate to destination. The arbitration committee found this was reasonable under the circumstances. (Louis Dreyfus did credit the Defendant the export rate from Rushville to original contemplated destination.) In fact, the committee could not find any other reasonable combination of rates to apply under those circumstances.
- The difference of some \$29,000 was primarily the difference between a F.O.B. and a delivered price (-5 cents December F.O.B. versus +5 cents delivered Norfolk = 10 cents) plus some \$7,000, which represented a difference in the value of the timing of the exchange of the December futures contract.
- The discounts assessed against Rush County Grain, which represented discounts charged to Louis Dreyfus in disposing of the grain, were fair and equitable as Louis Dreyfus itself was assessed these discounts.
- The 17 cents per bushel discount represented the value difference of No. 2 yellow corn averaging 4 percent damage versus No. 5 yellow corn and sample grade corn and was verified by two reputable and trustworthy firms. Their opinions were sought promptly and a 17-cent discount below the grades as reported was not unreasonable.
- The detention charge of four days at \$15 per day was deemed appropriate under the circumstances.

The arbitrators found that the accounting treatment used is customary in the grain trade. The arbitrators upheld Louis Dreyfus' discounts: 1) as they were discounts used in the actual sale to a third party; or 2) they were supported by two disinterested third parties as being fair market value of the difference between No. 2 yellow corn and corn containing an average of 13 percent damage and some corn being sour or weevily.

The arbitration committee unanimously ruled for Louis Dreyfus, and made no change in the distribution of funds which already had occurred.

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

Monty Eberts, Chairman  
Peavey Grain Companies  
Minneapolis, Minnesota

John Doherty  
Growmark, Inc.  
Chicago, Illinois

Fred McKim  
West Bend Elevator  
West Bend, Iowa