



Arbitration Decision

National Grain and Feed Association

August 15, 1991

Arbitration Case Number 1684

Plaintiff: Cargill Inc., Omaha, Neb.

Defendant: Archer Daniels Midland Co., Lincoln, Neb.

Statement of the Case

On Feb. 15, 1989, the plaintiff, Cargill Inc., sold 240,000 bushels of soybeans to the defendant, Archer Daniels Midland Co., by rail, F.O.B. Lincoln, Neb.

On Feb. 16, 1989, Cargill Inc. tendered to ADM one 75-car Union Pacific Railroad unit train of soybeans, loaded by Elders Grain Co., which was switched by the Burlington Northern Railroad at Lincoln, Neb. ADM's merchandiser instructed Cargill Inc. to bill the train as follows:

*"Archer Daniels Midland Processing
Lincoln, NE
Havelock Station
UP-BN Delivery
Open Bill of Lading
Freight to be prepaid by
Archer Daniels Midland-Lincoln, Nebraska"*

ADM refused responsibility for the \$12,750 in switching charges, paid by Cargill Inc., which were the result of billing instructions issued by ADM.

ADM contended that it purchased 240,000 bushels of soybeans from Cargill Inc. on a F.O.B. Burlington Northern basis. ADM also asserted that its merchandiser gave billing instructions to release the train to the Burlington Northern unaware that the cars already were on the Union Pacific. ADM contended that the train should not have been released to the Union Pacific without ADM's permission.

ADM further asserted that the contract between Cargill Inc. and Elders Grain Co. should be scrutinized thoroughly, as ADM believed Cargill Inc. manipulated this

contract to fit its subsequent sale to ADM. In doing so, ADM contended that the Union Pacific portion of the routing was fabricated by Cargill Inc. to protect its contract with Elders Grain Co.

Cargill Inc. contended that the train was sold to ADM on a "F.O.B. Lincoln" or "Track Lincoln" basis with no reference ever being made to "F.O.B. Elders Grain" or "F.O.B. Burlington Northern." Cargill further asserted that, in addition to the contract stating that it was selling a 75-car Union Pacific unit train, the quantity of soybeans purchased (i.e., 240,000 bushels) indicated a 75-car train, which was indicative of a Union Pacific unit, not a Burlington Northern unit (which generally trades in units of 54 cars).

Cargill Inc. sought reimbursement in the amount of \$12,750 covering switching charges it paid in addition to reimbursement of the \$400 arbitration service fee.

The Decision

The arbitrators based their decision on the facts and documentation presented by the parties. The Arbitration Committee believed that there was a significant lack of pertinent information and documentation. However, Section 6(a)(1) of the NGFA's Arbitration Rules clearly provides that the "*parties to the arbitration are responsible for clearly presenting all aspects of their case*" and that the Arbitration Committee "*is not responsible for undertaking fact-finding searches or discovery.*" The arbitration committee's first obligation in deciding a case is to enforce whatever agreement or contract existed between the parties.

After fully analyzing the purchase and sale contracts, the arbitrators determined that a discrepancy did not exist

between the contracts. The 75-car train tendered by Cargill Inc. fully complied with all the terms and conditions of both its sales contract and ADM's purchase contract. No evidence was submitted to suggest that the train was on the Burlington Northern when it was tendered to ADM. The evidence, however, indicated that ADM should have been aware that it had been tendered a 75-car Union Pacific unit train of soybeans on a F.O.B. Lincoln basis when it issued billing instructions to Cargill Inc.

The Arbitration Committee found in favor of the plaintiff, Cargill Inc. The arbitrators found that Cargill Inc. acted in accordance with the contract terms and did not manipulate or fabricate any part of the contract or routing. The arbitrators also found that the switching charges, for which Cargill Inc. sought reimbursement, were properly reimbursable charges.

The Award

The Arbitration Committee awarded Cargill Inc. \$12,750 as reimbursement for switching charges. The Arbitration Committee did not, however, award Cargill Inc. reimbursement of the \$400 arbitration service fee.

Submitted with the consent and approval of the Arbitration Committee, whose names appear below:

Darrell R. Wallace, *Chairman*
Union Equity Co-Operative Exchange
Enid, Okla.

Ed Laur
Attebury Grain Inc.
Amarillo, Texas

Ian Muir
Bunge Corp.
Kansas City, Kan.