



Arbitration Decision

National Grain and Feed Association

December 19, 1991

Arbitration Case Number 1687

Plaintiff: The Scoular Grain Co., Overland Park, Kan.

Defendant: Peavey Co., Kearney, Neb.

Statement of the Case

On Oct. 18, 1990, the plaintiff, the Scoular Grain Co., purchased from the defendant, Peavey Co., a 100-car, 330,000-bushel Gulf train of hard red winter wheat for Dec. 1-31, 1990 shipment.

Early in the week of Nov. 26, 1990, Peavey contacted Scoular to discuss the possibility of effecting application on Friday, Nov. 30 against their December sale. Scoular informed Peavey that in its opinion, this type of application would not be applicable in accordance with trade rules or trade practice. Scoular polled three other trading companies with which it had December train sales and all confirmed that they would not accept application prior to the commencement of the contract shipment period.

On Friday morning, Nov. 30, 1990, Peavey tendered a train being loaded at Hastings, Neb., to Scoular against its December contract and requested billing instructions by 4 p.m. CST that day. Weight and grade certificates show this train was loaded between Nov. 28 and Nov. 30, and was given a Dec. 1 bill of lading. After attempting unsuccessfully to find a trading partner that would accept application in a string, Scoular accepted Peavey's application under protest and sold the train out SPOT with any damages incurred to be for Peavey's account.

Scoular contended that, pursuant to trade practice and NGFA Grain Trade Rules 7(c), 7(d) and 8, a buyer is not obligated to accept application and

issue billing instructions prior to the commencement of the contracted shipment period.

Scoular sought \$7,425, plus interest, in damages associated with the market loss and brokerage fees involved in selling the train out into the SPOT market.

Peavey, as defendant, contended that all dates to a contract are inclusive and that, pursuant to NGFA Grain Trade Rules 7(c) and 8, a shipper/seller may tender a unit to a buyer prior to 12 noon on a Friday preceding a Saturday, Sunday or legal holiday, and is entitled to receive billing instructions by 4 p.m. central time that day.

Peavey made no financial counterclaim in this case but simply sought to defend itself against the demands for damages submitted by Scoular.

Both parties based their arguments on interpretations of trade practice and NGFA Grain Trade Rules 7(d) and 8. The pertinent sections of these rules provide for the following:

Rule 7. Billing Instructions:

"(d) When unit trains are sold for other than loaded shipment, the Seller must notify the Buyer by 12 noon, Central Time, that the unit will be loaded and ready for billing within 24 hours. The Buyer must furnish billing to a named destination by 4 p.m., Central Time, same day. On notification made between 12 noon and 4 p.m., Central Time, the

Buyer has until 10 a.m., Central Time, the following day to furnish same. Saturday, Sunday, and legal holidays are excluded. If a Seller notifies the Buyer by 12 noon, Central Time, on a Friday or a day preceding a holiday that a unit will be loaded on a Saturday, Sunday or legal holiday, the Buyer must furnish billing instructions to a named destination by 4 p.m., Central Time, on the date of notification."

Rule 8. Time of Shipment or Delivery:

"Grain to apply on a sale for shipment must be billed within the life of the contract,...When the last day of the contract falls on Saturday, Sunday or legal holiday, shipment shall be made on the next business day."

The main elements of these Trade Rules universally are understood and undisputed. What is brought to question is whether a shipment period can be expanded backwards one day when the first day of a contract occurs on a Saturday, Sunday or legal holiday.

The Decision

The arbitration committee's decision was based upon the facts and documentation presented by the parties. The primary issue in this case centered on the question of backward expansion of a shipment period when the first day of a contractual period occurs on a non-workday.

The arbitration committee found that Grain Trade Rule 8 clearly defines how a shipment is to be extended if the last day of a contract occurs on a Saturday, Sunday or legal holiday. The arbitrators could not, however, find a provision within the Trade Rules or trade practice that allows for the backward expansion of a contractual shipment or application period if the first day of the contract occurs on a weekend or holiday.

As a secondary issue, the arbitrators found it difficult to understand why both parties chose unnecessarily to create a dispute out of this application. Based upon the facts submitted, it is clear that this conflict and its subsequent damages easily could

have been avoided. Peavey, in its statement of facts, stated that there was no urgency, cost or true need for obtaining billing instructions on this train prior to Monday, Dec. 3. Peavey also stated that it could have conveniently provided a substitute train with a later dated December lading. Pursuit of either of these remedies would have avoided all conflicts and, therefore, truly mitigated any damages.

Based upon the aforementioned conclusions, the arbitrators found in favor of the plaintiff, the Scoular Grain Co.

The Award

The Arbitration Committee found that the exhibits presented in this case document a market value of 43 cents per bushel over the Kansas City Board of Trade March futures for December Gulf hard red winter wheat trains on Nov. 30, 1990. Scoular's requested damages were, therefore, adjusted to 1 cent per bushel, plus interest at 9 percent, the average prime interest rate (APR) between Dec. 1, 1990, and the Oct. 31, 1991, date this decision was rendered.

The damages owed by Peavey to Scoular were as follows:

.01 bu. x 330,000		\$3,300.00
.0025 bu. brokerage:	+	<u>825.00</u>
Subtotal		\$4,125.00
Interest for 335 days at 9 percent APR:	+	<u>340.74</u>
Total		\$ 4,465.74

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

Jay O'Neil, Chairman
Bartlett and Co.
Kansas City, Mo.

Gene McVey
W.B. Johnston Grain Co.
Enid, Okla.

Thomas J. Hammond
Columbia Grain
International Inc.
Portland, Ore.