



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

August 22, 1978

ARBITRATION CASE NUMBER 1539

PLAINTIFF: Bunge Corporation

DEFENDANT: Gene Powless

Statement of Case

Powless contracted on or about July 3, 1972 to sell 10,000 bushels of No. 1 yellow soybeans to Bunge at a price of \$3.15 per bushel, to be delivered during October and November, 1972. The market price of soybeans rose considerably after that date. Weather conditions made harvesting extremely difficult during the delivery period. Various conversations were had between Powless and representatives of Bunge Corporation. Powless claims he twice asked Bunge to buy out his contract. No writing has been produced to demonstrate this fact. Bunge's representatives deny this occurred. Powless claims he repudiated his contract in November of 1972. Bunge's representatives deny this. Bunge sent Powless a letter, which Powless received, extending the contract for sixty days. This extension was possible under the terms of the contract Powless signed. Powless did not reply to this letter. Small deliveries of soybeans under the contract were made by Powless to Bunge. More conversations between Powless and representatives of Bunge took place. Powless claims he either asked Bunge to buy out the contract, or repudiated the contract. Bunge's representatives deny this. Bunge then on January 3, 1973, sent Powless an invoice for \$8,187.54, representing the difference between the market price on that date and the contract price on the balance of the soybeans to be delivered, also stating on the invoice, "May we please have your check or delivery of the beans." Powless did not reply to this invoice. More conversations took place. Bunge extended the contract once more. Soon afterwards, on February 6, 1973, Bunge discovered that Powless had sold all his soybeans elsewhere and had no more to deliver. Considering this to be a breach or repudiation of the contract, Bunge claims damages of \$17,127.75, representing the difference between the market price on February 6, 1973 and the contract price on a balance of 8,355 bushels of soybeans. Powless also claims that Bunge refused to accept delivery of soybeans under the contract. No writing substantiates this claim, and Bunge denies it.

Decision

The committee finds for the Plaintiff, Bunge Corporation, in the amount of \$17,127.75. The committee discounts charges and counter-charges made in contradictory affidavits drawn up years after the events in question which are not supported by writings made at the time of the events. Therefore, the committee finds that Powless did not ask representatives of Bunge to buy out the contract during October or November. The committee finds that Powless did not repudiate his contract at that time. The committee considers Bunge's invoice of January 3, 1973 to have offered Powless a choice between closing out the contract as of that date and continuing the contract in effect. The committee is unable to see what other construction can be placed on the sending of this invoice. Powless did not indicate his choice and Bunge was therefore free to treat the contract as still in effect. The contract was therefore still in effect as of February 6, 1973, when Bunge first learned of Powless' repudiation. The measure of damages

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is therefore the amount of beans not delivered under the contract multiplied by the market price as of February 6, 1973, less the same amount of beans multiplied by the contract price.

Award

This committee, after hearing this case upon the Plaintiff's argument, the Defendant's argument, the Plaintiff's rebuttal, and the Defendant's surrebuttal, all of which were submitted to the committee in writing, finds for the Plaintiff, Bunge Corporation, in the amount of \$17,127.75.

Members of the Arbitration Committee:

/s/ K.D. Peterson, Chairman
Landmark, Inc.
Columbus, Ohio

/s/ Dewayne Bloem
Alden Cooperative Elevator
Alden, Iowa

/s/ Frank T. Heffelfinger
Peavey Company
Minneapolis, Minnesota

DECISION OF ARBITRATION APPEALS COMMITTEE

Arbitration Case Number 1539

PLAINTIFF: Bunge Corporation

DEFENDANT: Gene Powless

The Arbitration Appeals Committee has individually and collectively considered this case. The Appeals Committee concurs with the Arbitration Committee opinion but with the following exception:

The issuance by the Plaintiff of its invoice dated January 3rd, 1973, substantially evidences the fact that it considered the balance of the contract a dead issue at that point and prudently could have or did take the necessary procedure to put a stop to its losses.

Therefore the Appeals Committee awards the Plaintiff the established loss figure of \$8,187.54 recorded by its invoice dated January 3rd, 1973.

Unanimous.

/s/ H.V. Nootbaar, Chairman
H.V. Nootbaar & Company
Capistrano Beach, California

/s/ Charles H. Holmquist
Holmquist Elevator Company
Omaha, Nebraska

/s/ Madison Clement
Clement Grain Company
Waco, Texas

/s/ Clayton W. Johnson
Midstates Terminals, Inc.
Toledo, Ohio

/s/ Bruce O. Cottier
Bartlett & Company
Kansas City, Missouri