



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

April 15, 1982

ARBITRATION CASE No. 1568

PLAINTIFF: PILLSBURY COMPANY, MINNEAPOLIS, MINN.
DEFENDANT: LOUIS DREYFUS CORPORATION, STAMFORD, CONN.

ARBITRATION CASE No. 1570

PLAINTIFF: AGRI-INDUSTRIES, INC., WEST DES MOINES, IOWA
DEFENDANT: LOUIS DREYFUS CORPORATION, STAMFORD, CONN.
CROSS-PLAINTIFF: LOUIS DREYFUS CORPORATION
CROSS-DEFENDANT: AGRI-INDUSTRIES, INC.

The basis of the complaint involving Arbitration Cases 1568 and 1570 follows:

The Pillsbury Company sold 160,000 bushels of soybeans to Louis Dreyfus Corporation, basis "Delivered Gulf." Louis Dreyfus sold an identical quantity with the same terms to Agri-Industries basis "Delivered Gulf." The complaints of all parties hinged first on the interpretation of the phrase "Delivered Gulf" as a contractual commitment.

In interpreting this contractual agreement and the terminology of the contract, the National Grain and Feed Association has set guidelines for the Arbitration Committee. The first obligation of the committee is to enforce whatever agreement or contract the parties had.

Reliance on the Trade Rules is only necessary when there was no specific agreement on the issue between parties, and reliance on trade practices becomes necessary only if there is no trade rule. The committee may only interpret the contract, the trade rules and trade custom.

At issue is the terminology "Basis Delivered Gulf." The plaintiff, the Pillsbury Company, contended that Trade Rule 27 of the National Grain and Feed Association applied. Trade Rule 27 pertains to routing of the shipment to a contractually permissible destination.

Rule 27 was irrelevant to the case at hand and having settled that issue of rule 27 and lacking a specific rule in the grain trade rules, trade custom was invoked. In respect to trade custom for the terminology "Basis Delivered Gulf," Mr. Donald E. Nelson of D. E. Nelson, Inc. of St. Louis, Missouri responded correctly as to the custom of the trade. The term "Delivered Gulf" or "Gulf Export" is used as a pricing mechanism only to allow a grain merchandiser to establish a readily known freight relationship.

It is also an accepted trade practice in the Minneapolis cash market that when cars are sold "Freight Basis Minneapolis" or "Freight Basis Duluth" without naming a specific unloading elevator that a pricing structure in relationship to freight rates is established with no guarantee as to ultimate unload.

This pricing mechanism is necessary to preserve a fluid market and to establish a mutually agreed upon transportation expense. With the advent of the Staggers Act, and numerous volume and contract rates available to shippers today, it would be impossible to establish a market price for any individual city without a freight rate basis point. In this respect, Rule 1 of the Grain Trade Rules specifies that it is the duty of both the buyer and seller to include in their articles of trade, certain specifications, one of which relates to transportation specifications. Rule 1, Sub. H-1 states point of origin or delivery; or rate basing point.

Having determined the accepted trade practice regarding this terminology, the contractual obligations of all parties can be defined.

The Pillsbury Company contracted to sell 160,000 bushels of soybeans to Louis Dreyfus Corporation freight basis delivered Gulf.

Louis Dreyfus Corporation contracted to sell 160,000 bushels of soybeans to Agri-Industries freight "Basis Delivered Gulf."

These are two separate distinct contracts, their terms being the same has no bearing on the issue at hand. Each party has specific contractual obligations. The Louis Dreyfus Corporation's contention of being a "passive middleman" is not in spirit of the Grain Trade Rules or their contractual obligation.

Having established the definitions of the pertinent terms and contractual responsibilities, the facts as presented resulting in this arbitration are as follows:

The Pillsbury Company contacted Louis Dreyfus Corporation on or about February 27 and notified them of their inability to deliver within the February shipment period. The Louis Dreyfus Corporation put Pillsbury Company in contact direct with the ultimate buyer Agri-Industries.

At this time the contractual agreement was amended for March 1-15 shipment. The freight basis of the contract was never amended to guaranteed Gulf delivery. This agreement and contract was agreed to by all parties. At the time of the writing of this contract, Agri-Industries had expressed concern over their export commitments at their facility.

We question the validity of the Pillsbury Company's statement of taking positive action in good faith on February 27, 1981. This would be the very last day for Pillsbury to make shipment. Had the Pillsbury Company not taken action on the last day, the buyer Louis Dreyfus Corporation could have bought the soybeans in for the account of Pillsbury per the Grain Trade Rules, (Rule 11).

Three working days later, March 3, 1981, the Pillsbury Company applied a train, ex-Beaver, Iowa, to Louis Dreyfus Corporation and requested billing per their contracts.

Louis Dreyfus in turn applied the train to their contract with Agri-Industries and requested billing on March 4, 1981.

Agri-Industries responded to the request for billing with a domestic billing of Des Moines, Iowa.

On March 5, Pillsbury withdrew their contract application and refused billing over the objections of the Louis Dreyfus Corporation and Agri-Industries.

On March 6, Agri-Industries and in turn Louis Dreyfus Corporation, telexed Pillsbury that they would allow withdrawal of the Beaver, Iowa train, provided they would apply train(s) that had an equal or better freight spread to Des Moines, Iowa.

This turn of events was brought on by the initial inability to deliver by Pillsbury and the ultimate receivers export commitment. When it was apparent that there was not going to be delivery within contract specifications, the ultimate receiver Agri-Industries took action to limit their liability.

At the time the Beaver, Iowa train was applied, Louis Dreyfus Corporation notified Agri-Industries, who in turn sold this train to another firm in Des Moines, Iowa. While we felt that there was a lack of communication between the parties in obtaining billing prior to purchase of this Beaver, Iowa train, the contract was the only instrument binding.

Therefore, in Case #1570, we hold that Louis Dreyfus Corporation owes Agri-Industries the freight differential of 6.205¢ per bushel x 160,000 bushels or \$9,928.00 to make up the difference between the original application of Beaver, Iowa and the ultimate application of Swea City, Iowa.

No interest has been awarded to Agri-Industries.

In the matter of the cross complaint between the Pillsbury Company and Louis Dreyfus Corporation, we hold that the Pillsbury Company owes Louis Dreyfus Corporation a like amount of \$9,928.00 with no interest awarded, therefore the Pillsbury claim for \$23,800 is denied.

R. W. Bolton, Chairman
Atwood-Larson Company
Minneapolis, Minnesota

M. J. Eberts
Peavey Company
Minneapolis, Minnesota

Morris Champion
The Early & Daniel Company
Cincinnati, Ohio