



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

July 23, 1982

ARBITRATION CASE NO. 1573

PLAINTIFF: Cargill, Inc., Minneapolis, Minnesota

DEFENDANT: Seaboard Allied Milling Company, Shawnee Mission, Kansas

THE FACTS

On April 29, 1981 the Plaintiff sold to the Defendant 600 tons of 21% protein corn gluten feed for shipment during May, 1981. Eight cars were shipped from the Plaintiff's Memphis plant to a feed mill in Florida as requested by Defendant. Three and two-thirds cars were unloaded at the feed mill and the remaining four and one-third cars were rejected because the product appeared "dark" in color as if over-heated. The Plaintiff refused to accept the rejection notices and the parties were unable to resolve the issue. In order to stop demurrage costs, the one-third car was unloaded and hauled to a dump in Florida and the other four cars were shipped back to the Plaintiff's Memphis plant for unloading at a mutually agreed buy-back price f.o.b. Memphis. It was agreed that the responsibility for the costs regarding the rejected cars would be decided by arbitration.

THE DECISION

Based on careful examination of the evidence presented, the Committee determined that the Plaintiff fulfilled its contract obligations regarding the quality of the product.

The Plaintiff and the Defendant each issued a separate contract. The Plaintiff's contract called for "origin analysis to govern" but the Defendant's contract was silent regarding the analysis to govern. Both contracts were silent as to acceptable color.

The Defendant's contract stipulated that the product be "...suitable for feeding to poultry and livestock." Although railroad inspection reports and a State of Florida analysis indicated that the product in the rejected cars ranged from "slightly brown" to "unusually darkened as if possibly over-heated in processing," there was no evidence presented that this was deleterious to the product. No examination by third parties indicated a burned odor or other odors of unusual quality and the railroad inspection reports stated that the "commodity was dry and in apparent good condition." Additionally, the Plaintiff's contract warranted that the goods sold were of "merchantable quality" and that there were no other warranties, expressed or implied, "...arising from cause of dealing and usage of trade of quality or fitness of purpose."

(MORE)

THE AWARD

The Arbitration Committee awarded to Plaintiff Cargill, Inc. as follows:

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|---|-------------|
| Unpaid Invoices | \$31,935.82 |
| Cancellation Equity | 1,538.02 |
| Reshipment Costs | 10,280.00 |
| Demurrage | 6,920.00 |
| Feed Disposal Costs | 140.00 |
| Less Purchase Price on Returned Feed | 29,344.02 |
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| TOTAL AWARD | \$21,469.82 |

Plaintiff's claim of \$3,000 for "estimated" unloading costs at Memphis was denied due to insufficient proof. Defendant's counterclaim of \$7,350.10 was also denied.

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

/s/ Richard Pittelkow, Chairman
Lauhoff Grain Division, Bunge Corporation, Danville, Illinois

/s/ Philip Lindau
The Pillsbury Company, Minneapolis, Minnesota

/s/ William Westerbeck
American Maize-Products Company, Chicago, Illinois