



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

November 11, 1982

## Arbitration Case Number 1581

Plaintiff: Fred Webb, Inc., Greenville, North Carolina

Defendant: Lee's Farm Service, Inc., Bronwood, Georgia

### Statement of the Case

On October 21, 1981, the Plaintiff purchased one three-car multi of U.S. No. 2 Soft Red Winter Wheat from the Defendant, through a broker, Edward H. Smith & Company, Inc. Broker's confirmation of the trade, Number 7265, specified "origin official grades, F.O.B. Reynolds, Georgia."

The multiple car unit was shipped to General Mills, Inc., at Johnson City, Tennessee, where all three cars were rejected because of insect-damaged kernels in excess of the specifications permitted by the processor.

After further grading and negotiation resulting in additional charges for demurrage, the multiple car unit was shipped to Cargill, Inc., Chesapeake, Virginia, for export, resulting in additional freight charges.

The Plaintiff claimed \$8,591.99 to cover costs resulting from replacing the wheat, demurrage and additional freight. The Defendant claimed a balance due of \$2,626.40 on contract.

### Majority Decision

Since the trade was made through a broker, National Grain and Feed Association Grain Trade Rule 6(b) applied. The rule states that the confirmation issued by the broker prevails. Since this is the case, the Plaintiff in effect had purchased the grain with "origin grades, F.O.B. Reynolds, Georgia." The Defendant did secure origin grades, with all three cars grading U.S. No. 1 Soft Red Winter Wheat. Damaged kernels ranged from 0.8 percent to 1.2 percent. Since the grain was purchased "F.O.B. Reynolds, Georgia," the Plaintiff took title to the grain when the rail carrier accepted the shipping document "Grain Trade Rule Number 3." Since the broker's confirmation did not specify "Milling Quality," the Plaintiff accepted the risk of the wheat being acceptable for flour milling.

The Defendant was awarded the \$2,626.40 balance due on the contract, plus interest at 1½ percent over the average prime rate from the day after the cars arrived at Chesapeake, Virginia, until the day after the Plaintiff was notified of the decision on the case, plus the days the cars were detained in Johnson City, Tennessee.

R.K. Scheiderer, Chairman  
The Ohio Grain Company  
Mechanicsburg, Ohio

Larry Tompkins  
Demeter, Inc.  
Fowler, Indiana

### Minority Opinion

The Defendant failed to confirm the trade in writing, thereby making itself subject to the Plaintiff's contract, and acknowledged the validity of the contract by using it as a basis of argument.

The Plaintiff's contract specified the commodity must be of a quality that can be moved in interstate commerce under Food and Drug Administration regulations. The wheat was not of this quality since it exceeded the FDA actionable level of insect-damaged kernels. The seller had a primary obligation to deliver a commodity not subject to condemnation and seizure by the FDA.

The Defendant sold the wheat F.O.B. origin, destination weights and grades, as evidenced by the Plaintiff's contract, thereby making the wheat deliverable to any destination of the buyer's choosing.

The Plaintiff's reference to U.S. Department of Agriculture warehouse receipt requirements and the Plaintiff having purchased wheat in the past not applicable to its contract is not relevant to this arbitration case. Neither is the Defendant's allegations as to the quantity of good quality wheat it has shipped at other times.

I believe the Plaintiff should be awarded the sum of \$9,291.99, and the Defendant \$700 basis appreciation, plus \$2,626.40 due in settlement of the three cars of wheat.

Forrest W. Brush  
S.M. Whitney Company, Inc.  
Augusta, Georgia

### Arbitration Case Number 1581

#### Decision of the Arbitration Appeals Committee

Appellant: Fred Webb, Inc., Greenville, North Carolina

Appellee: Lee's Farm Service, Inc., Bronwood, Georgia

The Arbitration Appeals Committee individually reviewed all written evidence submitted in Arbitration Case Number 1581 and reviewed the findings and conclusions of the original arbitration committee. After due deliberation, the Arbitration Appeals Committee unanimously agreed with the majority decision of the original committee for the same reasons as stated in its decision.

James Donnelly, Chairman  
R.F. Cunningham & Company, Inc.  
Melville, New York

Clayton W. Johnson  
Midstates Terminals Inc.  
Toledo, Ohio

W.C. Theis  
Simonds-Shields-Theis  
Grain Company  
Kansas City, Missouri

Charles H. Holmquist  
Holmquist Elevator Company  
Omaha, Nebraska

Royce S. Ramsland  
The Quaker Oats Company  
Chicago, Illinois