



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

February 24, 1983

Arbitration Case Number 1589

Plaintiff: National Farms Inc., Atkinson, Nebraska

Defendant: Bearhouse Inc., Hamburg, Arkansas

Statement of the Case

On January 30, 1981 the Plaintiff, National Farms Inc., sold the Defendant, Bearhouse Inc., 100,000 bushels of U.S. No. 2 Hard Red Winter Wheat to be delivered during June and July 1981. The contract covering the trade did not specify the type of weights or grades to be furnished. Previous trades were completed on destination terms, and must be assumed in this case. The first 40,000 bushels were delivered without incident. Then rains and warm weather caused sprouting in the fields and made it impossible for the Plaintiff to deliver No. 2 Hard Red Winter Wheat on the balance of the contract. Shipments were resumed on June 8, 1981. Shortly thereafter, the Plaintiff received reports of heavy damage and damage discounts. On or about June 11, 1981 the Defendant was advised to obtain state grades on any grain grading in excess of 20 percent damage. Twelve such grades were obtained, and one showed more than 20 percent damage. The Plaintiff claimed that the grades furnished by the receiving elevator at destination were not representative of the grain delivered, and that the discounts applied were excessive and not representative of the market value in that area. The Plaintiff claimed \$28,556.45 in excess discounts.

The Decision

Based upon the facts presented, the arbitration committee did not believe that it could rule on one company's discount compared to another. There are always many discount schedules in effect at one time. It was the shipper's responsibility to deliver what it sold, and if this is not possible under the discount schedule of the buyer other relief is available under Grain Trade Rules 10, 11, 12 and 13. The Defendant, Bearhouse Inc., should have obtained the state grades as agreed upon or about June 11, 1981. It should provide state certificates to claim discounts for grain in excess of 20 percent damage.

The Plaintiff was awarded as follows:

Discounts assessed by the Defendant:	\$35,690.32
Discounts allowed to 20 percent maximum damage after June 11, 1981 shipment unless state grades were furnished:	\$26,539.95
Award to the Plaintiff:	\$9,150.37

The arbitration committee also awarded interest totaling \$1,943.60 on the above amount based upon an interest rate of 18.03 percent, which was the weighted average of the Kansas City prime rate from July 6, 1981 to August 20, 1982 for the period of July 6, 1981 until the date of the award.

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

Paul A. Trower, Chairman
Evans Grain Company, Salina, Kansas

John Hirsch
Garvey Elevators Inc., Hutchinson, Kansas

Paul Hughes
Farmers Soybean Corp., Blytheville, Arkansas

Arbitration Case Number 1589

Decision of Arbitration Appeals Committee

Appellant: Bearhouse Inc., Hamburg, Arkansas

Appellee: National Farms Inc., Atkinson, Nebraska

The Arbitration Appeals Committee individually reviewed all written evidence submitted in Arbitration Case Number 1589, Bearhouse Inc., Appellant, vs. National Farms Inc., Appellee, and reviewed the findings and conclusions of the original arbitration committee. The Arbitration Appeals Committee unanimously agreed with the findings of the original arbitration committee, but believed that, with the evidence presented, the award should be greater for the following reasons:

--The Appellant, Bearhouse Inc., did not follow the directions of the Appellee to have state grades on all trucks grading 20 percent damage or more on or about June 11, 1981. The average grade on the 12 trucks that were state-graded was 15 percent damage.

--The original contract showed no discount scale. The Appellant, Bearhouse Inc., stated that the Appellee knew that the Bunge Corporation discount scale was to apply. We quote from a copy of Bunge GW302 scale sheet supplied by the Appellant: "Damage over 10 percent may be rejected by buyer or at buyer's option may be accepted subject to such discounts as agreed upon by buyer and seller." (Underscoring added by committee) There was no evidence to show that any attempt was made to have a meeting of the minds, or mutual agreement on what discounts would apply.

--The Appellant, Bearhouse Inc., in its appeal brief quoted Grain Trade Rule 41, "Alteration of Contract." Since the original contract did not show what type of grades were to apply or any discount scale to apply, the Appellant breached Grain Trade Rule 41 by insisting upon Bunge Corporation Scales 302 without confirming it in writing. It is apparent that destination inspections were to apply. But what type of destination inspections (house or state) and what discount scale were to apply were never mutually agreed upon by both parties.

--Grain Trade Rule 17 -- "Quality Outside Contract Terms," although it specifies cars, it is a fact that all Grain Trade Rules cover trucks as well as cars. We quote a portion of Grain Trade Rule 17, line 6: "Which fail to grade according to the contract terms, notify the seller of such failure to grade by a telephone call placed or by a telegram filed not later than 12 o'clock noon on next business day... their rejection or acceptance with a discount, whereupon it shall be the duty of seller receiving such notice to agree upon the discount with the buyer or to wire disposition at once." While this rule did not fit the situation exactly, it did once again confirm that no arbitrary or unilateral discounts should be allowed without mutual agreement of both parties involved. We believed that there is not evidence in this arbitration case to indicate any attempt by the Appellant at any time to obtain mutual agreement on discounts.

Therefore, the Arbitration Appeals Committee unanimously agreed that from June 11, 1981, the maximum discount allowed for damage should be the average of the 12 trucks that were state inspected, namely 15 percent on damage. The award to the Appellee, National Farms Inc., is as follows:

Original Award:	\$ 9,150.37
Interest Paid on Original Award:	1,943.60
Appeal Award: (Difference between 15 and 20 percent damage)	5,394.87
Interest at 18.03 percent for appeal award from July 6, 1981 to December 14, 1982:	<u>1,421.22</u>
Total	\$17,910.06

The Arbitration Appeals Committee was unanimous in awarding a total of \$17,910.06 to the Appellee, National Farms Inc.

It was very clear to the Arbitration Appeals Committee that through lack of communication there was never a meeting of the minds on discounts and changes in contracts. This committee believed that without mutual agreement, the Appellee was wronged beyond what the original arbitration committee allowed.

It should also be pointed out that once an arbitration case is initiated and both parties to the arbitration agree to arbitrate, there is no distinction between member and nonmember in an arbitration decision.

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

Richard Goldberg
Goldberg Feed & Grain Company, West Fargo, North Dakota

Clayton Johnson
Midstates Terminals Inc., Toledo, Ohio

Rupert Quinn
Benson-Quinn Company, Minneapolis, Minnesota

Royce Ramsland
The Quaker Oats Company, Chicago, Illinois