



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

October 27, 1983

ARBITRATION CASE NUMBER 1601 (I & II)

Plaintiff: Landmark Inc., Columbus, Ohio

Defendant: Commodities Corp., Fort Wayne, Indiana

Cross-Plaintiff: Commodities Corp.

Cross-Defendant: Central Soya Inc., Fort Wayne, Indiana

## Statement of the Case

Landmark Inc. sold to Commodities Corp. (through a broker) 227,500 bushels of corn in buyer's equipment (65-car unit train) F.O.B. Ohio B&O export train loading point (sellers option to load Michigan, Indiana or Illinois B&O export train loading point at usual freight differential). The train was to be loaded between Oct. 25, 1982, and Nov. 10, 1982 (both dates included). On Nov. 5, 1982, Landmark Inc. named Uniopolis, Ohio, as load point when Commodities Corp. applied a train designated 71-04. On Nov. 9, Landmark Inc. discussed the need for timely arrival of the train and discussed late charges of 5 cents-per-bushel per day plus 1 percent over prime rate with a minimum of two and a maximum of five days interest. On Nov. 10, it appeared unlikely that train 71-04 would arrive on Nov. 10, the final date of shipment period. Landmark Inc., based upon information that the train would not arrive on Nov. 10, informed Commodities Corp. and formally proposed the late charges discussed on Nov. 9. Commodities Corp. advised via telephone that the charges were acceptable and no wire confirmation was necessary. The train was placed on Nov. 11 at 10:25 p.m. Commodities Corp. basically agreed that the facts as stated by Landmark Inc. were correct. Central Soya Inc. also was in agreement with the facts but not to the extent of the late charges although it agreed and expected to pay a penalty for being late.

## The Decision

It was clear that the plaintiff and the defendant agreed upon the facts. It is the opinion of the arbitration committee that the plaintiff and the defendant agreed to the late charges. The plaintiff and defendant had a contractual agreement that verified all the facts. Thus, the defendant cannot avoid its responsibility as contractually stated and agreed. The defendant, Commodities Corp., owes Landmark Inc. the following charges:

Storage:	One day 215,851.16 bushels at 5 cents	\$10,792.56
Interest:	Two days at 10.5 percent	248.23
		<u>\$11,040.79</u>

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The facts indicated that the cross-plaintiff advised the cross-defendant on Nov. 10, 1982, what late charges would be assessed if the train were late. The defendant had options it could exercise at that point, which were not exercised. The defendant again was advised of the charges on Nov. 12, 1982. The arbitration committee believed that the cross-plaintiff did everything it could and basically adhered to Grain Trade Rule 10, which addresses buyers conveyance. The facts indicated that the cross-defendant, Central Soya Inc., was adequately notified of proposed late charges and it was the responsibility of Central Soya to come to an agreement since it failed to supply conveyance within the contract period. In fact, the cross-defendant was notified prior to the expiration of the contract period. The committee believed that good business practices, as well as the grain trade rules, were used by the cross-plaintiff. The facts indicated that the cross-defendant did not make its opposition to the proposal known for an unreasonable period after failing to perform on the contract. The arbitration committee, therefore, ruled that the cross-defendant, Central Soya Inc., is required to pay the \$11,040.79 to the cross-plaintiff, Commodities Corp.

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

Richard A. McWard, Chairman  
Bunge Corp.  
St. Louis, Missouri

Tom Toohy  
Agricol Georgia Inc.  
Atlanta, Georgia

Gary Pistoria  
Harvest States Cooperatives  
St. Paul, Minnesota