



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

June 21, 1984

Arbitration Case Number 1608

Plaintiff: CPC International Trading Corp., Englewood Cliffs, N.J.  
Defendant: I.S. Joseph Co., Minneapolis, Minn.

## Statement of the Case

The trade dispute concerned corn gluten feed pellets loaded into barge T-3031 at Granite City, Ill., on July 15, 1982 by the defendant for the plaintiff under a throughput agreement dated June 1, 1982. The barge arrived at the Gulf on July 23, 1982. On Aug. 11, 1982 the plaintiff was notified by the fleet operator that the barge was smoking heavily from covers three and eight. After notifying the defendant of this fact, and that a survey report on barge T-3031 showed that drain channels were clogged with product in the area where the material was smoldering, the plaintiff had 333.76 tons of damaged product removed on Aug. 13, 1982.

The plaintiff claimed loss of 333.76 tons of corn gluten feed pellets damaged by the fire and removed from the barge for a total amount of \$33,532 plus interest. The plaintiff claimed negligence on the part of the defendant, concluding that "the cause of the fire was self-combustion as a result of excessive moisture due to a drain channel being clogged with product, which allowed water to run over the side of the channel into the barge, and that this loss would not have occurred if the defendant had seen to the proper cleaning of the drain channel after loading the product on barge T-3031."

The defendant denied liability for the loss, stating that its obligation under the throughput agreement was to receive corn gluten feed by truck and by hopper car, pelletize it, load it into barges, and guarantee the product to be cool and sweet at the time of loading. The defendant stated that the plaintiff failed to establish the cause of the fire. Based upon the opinion of a different surveyor, it concluded "that the barge had been subjected to condensation of moisture from its cargo while sitting at the Gulf for 19 days, and that the process of heating and condensation in the moist New Orleans weather caused the fire of Aug 11." The defendant stated that although its responsibility technically ended when it loaded the product in a cool and sweet condition under the terms of the contract, its liability certainly ended five days after the arrival of barge T-3031 at the Gulf, in that there was no inspection and notification as to condition of the product within five days after arrival as is the custom in the corn gluten feed trade.

### The Decision

The arbitration committee, after individually reviewing all documents submitted by both parties, unanimously found in favor of the defendant for the following reasons.

- The throughput agreement made no special requirement of the defendant concerning the loading of the corn gluten feed pellets, except that the quality be maintained as shipped by the plaintiff and guaranteed by the defendant to be cool and sweet at time of loading.
- The plaintiff made arrangements for the barge transportation, had title to and control of the pelleted feed in the barge, and chose to leave the barge anchored for 19 days after arrival at the Gulf.
- There is no conclusive proof that the clogged drain was the sole or direct cause of the fire. Certainly, no one can ignore the atmospheric conditions at the Gulf in July and August.

The committee rejected the plaintiff's claim that its loss resulted from the defendant's failure to perform proper services under the terms of their throughput agreement, and denied any and all claims.

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

David Porter, chairman  
Tabor Grain Co.  
Decatur, Ill.

Gary Mills  
Cargill Inc.  
Chesapeake, Va.

David Van Vort  
Buccellato Vaccaro and Co.  
Fort Lee, N.J.