



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

October 10, 1985

## Arbitration Case Number 1622

Plaintiff: R. F. Cunningham and Co. Inc., Melville, N.Y.

Defendant: F. M. Brown's Sons Inc., Birdsboro, Pa.

### Statement of the Case

On July 31, 1984, the plaintiff, R. F. Cunningham and Co. Inc., sold the defendant, F. M. Brown's Sons Inc., three cars of U.S. No. 2 yellow corn, at \$3.83 per bushel delivered Birdsboro, Pa. The corn was to be shipped Aug. 16, 1984, as per plaintiff's contract No. 5059.

The three cars arrived at Birdsboro, Pa., on Aug. 28, 1984. They were found to be unacceptable because of a hot and moldy condition. On Aug. 30, 1984, the plaintiff and the defendant agreed to allow replacement according to National Grain and Feed Association Grain Trade Rule 16, "Condition Guaranteed on Arrival."

On Sept. 4, 1984, three more cars were shipped. The first two cars were spotted on Sept. 17, 1984, and unloaded on Sept. 19 and Sept. 21. The third car, LN 240094, was spotted Sept. 20, 1984, and was rejected Sept. 21, 1984 because the corn was hot and moldy, as were the original three cars.

The plaintiff removed the unacceptable car and wanted to apply Grain Trade Rule 16 a second time. The defendant objected to this solution and wanted to wash the contract.

On Oct. 16, 1984, the plaintiff notified the defendant that it was canceling the remaining car on contract 5059 at \$3.45 per bushel delivered Birdsboro, Pa., which amounted to \$1,330. The defendant refused to pay this claim.

Subsequently, on Oct. 26, 1984, the plaintiff offered to settle for \$1,000 and on Jan. 4, 1985, an offer was made to settle for \$665. From the material presented to the arbitration panel, neither party disagrees with these facts.

### The Decision

Grain Trade Rule 16 does not state how many times this solution can be applied in the same case. To allow the plaintiff to attempt replacement a second time would damage the defendant.

The plaintiff showed good faith in attempting to find a solution to a difficult situation.

Since there is not a clear-cut remedy in the Trade Rules, it is the arbitration panel's opinion that the two parties split the claim.

### The Award

The arbitration panel awards R. F. Cunningham and Co. Inc. \$665, without interest.

Submitted with the consent and approval of the arbitration panel, whose names appear below.

Howard R. Wright, chairman  
Baltic Mills Inc.  
Vincennes, Ind.

Edward P. Milbank  
Milbank Mills Inc.  
Chillicothe, Mo.

R. T. Creekmore  
The Early and Daniel Co. Inc.  
Cincinnati, Ohio