



Arbitration Decisions

December 18, 1986

Arbitration Case Number 1636

Plaintiff: Continental Grain Co., St. Louis, Mo.

Defendant: Curtis Rodgers, Platte City, Mo.

Statement of the Case

The defendant, Curtis Rodgers, sold three quantities of U.S. No. 2 milo to the Continental Grain Co. The three contracts were for 85,000 bushels, with two contracts calling for St. Louis delivery and one contract specifying Kansas City delivery. The shipment periods were for different times during November and December 1982. The two St. Louis contracts specifically called for maximum moisture content of 15 percent. All three contracts were subject to Continental Grain Co.'s scale of discounts.

Only one contract confirmation was signed and returned by Curtis Rodgers.

Between Nov. 9, 1982 and Nov. 12, 1982, 17 trucks totaling about 6,328 bushels of milo were delivered to Kansas City on contract number 39434. Some of the milo delivered and accepted was sample grade because of high moisture. On Nov. 15, 1982, an 18th load was delivered to Kansas City and rejected for being sample grade because of test weight and moisture.

The four payments for the 17 loads delivered either were stopped or refused because of incomplete endorsement or the lack of the lien holder's name on the payment. On Nov. 23, 1982, Curtis Rodgers indicated he would not honor the remainder of the three contracts until he received payment. Also on Nov. 23, an agreement was reached that in the future: 1) all payments would be made in two days; 2) the delivery destination would remain as per the original confirmations; 3) there would be no averaging of grades; and 4) the funds for the first 17 loads were to be wired, which the Continental Grain Co. did on Nov. 24, 1982.

No further loads were delivered and on Nov. 30, 1982, Curtis Rodgers advised Continental Grain Co. that he would not deliver any more milo. That same day, Continental canceled the existing contract amounts at market value:

<u>Contract Number</u>	<u>Quantity</u>	<u>Contract Price</u>	<u>Market Value</u>	<u>Total</u>
#57776,	50,000 bushels at \$3.95 CWT	\$3.95	\$4.70 CWT market value =	\$21,000
#58059,	15,000 bushels at \$4.09 CWT	\$4.09	\$4.70 CWT market value =	\$ 5,124
#39434,	13,672 bushels at \$4.02 CWT	\$4.02	\$4.36 CWT market value =	<u>\$ 2,603.15</u>

The total cancellation charges were: \$28,727.15

Rodgers refused payment and contended that Continental Grain Co. had breached the contract because it had refused to accept all of Rodgers' milo that was delivered and because the payments on some drafts were stopped. Subsequently, Curtis Rodgers counterclaimed for \$8.60 in interest and \$25,000 in punitive damages.

Pursuant to this arbitration case, on Aug. 23, 1985 the U.S. District Court for the Western District of Missouri declared that Curtis Rodgers was a merchant under Missouri's version of the Uniform Commercial Code.

The Decision

Generally, the custom of the trade is that the buyer reserves the right whether to accept on contract poor-quality or off-grade grain. Continental Grain Co. attempted to work with Rodgers by taking several loads of very high moisture milo. Continental rejected the 18th load because of low test weight and high moisture content, both of which made the load sample grade. The arbitrators, therefore, did not conclude that Continental Grain Co. breached the contract by rejecting the 18th load of milo.

According to Continental's contract confirmations received by Rodgers, Continental Grain Co. had the right not to make payment for any milo until total performance under the contract had been completed. Continental Grain Co. attempted to make payment for the milo that had been delivered through a series of drafts. Continental refused payment on some of the drafts because a lien holder was not also listed as a payee. Within a few days after the stop payment and after a verbal agreement between Rodgers and Continental, Continental Grain Co. wired the funds for all the delivered milo on Nov. 24, 1982. Therefore, the arbitration panel did not agree that the series of events regarding payment for the milo involved a breach of the contract by Continental.

The arbitrators concluded that Continental Grain Co. canceled the contracts in a proper manner.

The arbitration panel unanimously ruled in favor of the Continental Grain Co. and directed that Curtis Rodgers pay \$28,727.15 to Continental Grain. Interest is to be paid on this amount to Continental at the rate of 9 percent from Nov. 30, 1982 until the arbitration panel's decision was rendered.

The defendant's counterclaim was rejected.

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

John L. McClenathan, Chairman
GROWMARK Inc.
Bloomington, Ill.

Dave Jump
Gateway Grain Inc.
Pekin, Ill.

John Severe
Western Grain Inc.
Wichita, Kan.