



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

February 16, 1989

Arbitration Case Number 1648

Plaintiff: Fred Webb Inc., Greenville, N.C.
Defendant: R.F. Cunningham & Co. Inc., Melville, N.Y.

Statement of the Case

This dispute involved official versus submitted grades in which the plaintiff, Fred Webb Inc., purchased five cars of wheat from the defendant, R.F. Cunningham & Co. Inc., through the Cameron Brokerage Co.

The dispute arose over the type of grades (official or submitted) actually traded between the plaintiff and defendant. The plaintiff, Fred Webb Inc., contended it purchased official grades, and its confirmation mailed to the defendant stated origin official weights and grades to govern. Upon application of the cars from the defendant to the plaintiff, the plaintiff sold the cars out to a third party basis official grades and weights to govern. The cars were billed to the third party to Toledo, Ohio.

Upon arrival of the cars at Toledo, Ohio, the third-party buyer notified the plaintiff, Fred Webb Inc., that no official grades had been furnished and requested destination FGIS official grades before it would accept the cars. After obtaining the destination FGIS official grades, the cars were rejected by the third-party buyer on grounds the grain was not representative of what originally was sold.

The plaintiff notified the defendant of the situation, through the Cameron Brokerage Co. When no resolution of the situation could be reached, the plaintiff billed the cars to North Carolina to avoid additional costs and penalties.

The plaintiff claimed damages in the amount of \$6,988.41 for freight loss, grade difference, demurrage and the cost of obtaining destination FGIS official grades.

The defendant, R.F. Cunningham & Co. Inc., refuted this claim, stating it sold submitted grades. Its contract stated origin, Buffalo Corn Exchange weights and grades to govern.

The broker's contract was silent as to the terms of the weights and grades. The defendant further stated that the plaintiff, Fred Webb Inc., signed and returned its confirmation which the defendant contended was acceptance of the defendant's contract.

The Decision

No mention was made by the plaintiff, Fred Webb Inc., the defendant, R.F. Cunningham & Co. Inc., nor the Cameron Brokerage Co. as to submitted grades. The Cameron Brokerage Co.'s contract was incomplete, in that the contract was silent on the issue of weights and grades to govern. The plaintiff's contract stated origin official grades and weights to govern and the defendant's contract stated origin Buffalo Corn Exchange weights and grades to govern.

The arbitration committee found the following Grain Trade Rules to be pertinent in this case:

Grain Trade Rule 14 states: "When grain is sold by receivers or distributors located in terminal and interior markets, it shall be understood and agreed that the weights and official inspection of the market from which the grain is shipped shall govern, unless otherwise agreed or understood at the time of shipment."

In addition, Grain Trade Rule 4.B. states the term "official inspection," without specifying class, shall mean Class A Official Inspection," unless otherwise specified.

Further, Grain Trade Rule 6.(a) states it is the duty of both buyer and seller to mail in writing confirmations setting forth the specifications as agreed upon in the original articles of trade. "Upon receipt of said confirmation the parties thereto shall carefully check all specifications named therein and upon finding any differences, shall immediately notify the other party to the contract," the rule states.

Grain Trade Rule 6.(b) states it shall be the duty of the broker to send a written confirmation to each of the principals setting forth the specifications of the trade as made. Upon receipt, the parties thereto shall carefully check all specifications named therein, and upon finding any differences, shall immediately notify the other party to the contract, and the broker.

Grain Trade Rule 6(c) states if either buyer or seller fails to send out confirmations, the confirmation sent out by the other party will be binding upon both in case of any dispute, unless the confirming party has been notified immediately by the nonconforming party, as described in 6.(a), of any disagreement with the confirmation received.

In this case, the defendant, R.F. Cunningham & Co. Inc., did not offer the evidence to support that it sold submitted grades. Its argument that the plaintiff accepted its contract by signing and returning it offered no evidence for its argument that submitted grades should apply, as its contract had no reference to submitted grades.

Further, since no reference was made to submitted grades by either the plaintiff, defendant, nor the broker, it is the opinion of this committee that official inspections of the market from which the grain was shipped should govern. But in the absence of origin official grades, destination FGIS official grades will govern.

The Award

The arbitration committee found unanimously in favor of the plaintiff, Fred Webb Inc., for the full amount of its claim as follows:

1. Freight from Buffalo, N.Y., to Toledo, Ohio	\$3,825.00
2. Freight difference from Toledo, Ohio, to Greenville, N.C., vs. Buffalo, N.Y., to Greenville, N.C.	485.44
3. Grade difference between origin submitted grades and destination FGIS official grades	1,251.17
4. Demurrage on cars at Toledo, Ohio	1,000.00
5. Destination FGIS official grade inspections	426.80
Total Award	\$6,988.41

Interest at the current prime rate also shall be due the plaintiff from June 1, 1987 until the date payment is made.

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

Jim McIntosh, Chairman
Union Equity Cooperative Exchange
Enid, Okla.

David Houts
Central Soya Co. Inc.
Fort Wayne, Ind.

John W. Nutt
J.W. Nutt Co.
North Little Rock, Ark.

Arbitration Case Number 1648 Decision of Arbitration Appeals Panel

Appellant: R.F. Cunningham & Co. Inc., Melville, N.Y.
Appellee: Fred Webb Inc., Greenville, N.C.

As stated by the original arbitration committee, there were differences of opinion in this case concerning the contract terms regarding applicable grades.

In its decision, the arbitration committee referenced Grain Trade Rules 14, 4 and 6. We find the arbitration committee's reliance upon these Trade Rules to be correct and its reasoning that official grades should govern in this situation to be valid.

The arbitration appeals panel unanimously affirms the decision of the arbitration committee in favor of the appellee.

Thomas Feldmann, Chairman
West Central Cooperative
Ralston, Iowa

L. Scott Hackett
General Mills Inc.
Minneapolis, Minn.

John P. Case
Kellogg Commission Co.
Minneapolis, Minn.

John W. McCulley
Oakville Feed and Grain Inc.
Oakville, Iowa

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