



Arbitration Decision

National Grain and Feed Association

March 2, 1989

Arbitration Case Number 1650

Plaintiff: The Andersons, Maumee, Ohio
Defendant: Cooperative Elevator Co., Pigeon, Mich.

Statement of the Case

On Oct. 13, 1987, The Andersons bought two contracts of corn from the Commodity Credit Corporation stored at Cooperative Elevator Co., Pigeon, Mich., consisting of 373,749.20 bushels and 141,990.73 bushels, respectively. Both parties agreed there were no discussions between The Andersons and Cooperative Elevator Co. prior to these purchases from CCC concerning storage or load-out charges that would apply after title transferred.

Between Oct. 30, 1987, when CCC issued a wire release to The Andersons for all of the quantities involved, and Dec. 22, 1987, a total of 417,820.37 bushels were loaded out of Cooperative Elevator Co. The Andersons and Cooperative Elevator Co. agreed that the storage rate for this quantity was to be 0.0986-cents-per-bushel per-day and that the load-out rate was to be 10 cents-per-bushel plus the cost of weighing and inspection. These rates were in accordance with Cooperative Elevator's Uniform Grain Storage Agreement rates in effect at that time.

Cooperative Elevator Co. notified The Andersons on Dec. 30, 1987 that the previous storage and load-out rates required under the UGSA contract had expired and that load-outs would be suspended until new rates could be negotiated between the parties. In support of this position, Cooperative Elevator Co. cited Section 19(b)(2) of the 1987-88 UGSA contract, which stated: *"The storage and handling rates listed on the current schedule of rates shall remain in effect for such grain for a period of 60 days after the date of the loading order issued by CCC."*

Cooperative Elevator Co. proposed a 25-cent-per-bushel load-out charge and storage charges to remain unchanged. The Andersons countered with a 15-cent-per-bushel-load out charge and storage charges to remain unchanged. No agreement was reached by the parties as to these rates. The balance of the quantity (97,919.56 bushels) was loaded out on Dec.

31, 1987 and Jan. 11, 1988. The Andersons paid the 25-cent-per-bushel load-out charge under protest.

The Andersons claimed \$14,687.94 as the difference between the original 10-cent-per-bushel load-out rate and the "new" 25-cent-per-bushel rate and interest thereon. Cooperative Elevator Co. counterclaimed to recover the \$400 arbitration fee plus \$2,000 "to cover costs, time and materials required to defend ourselves in this case."

The Decision

The arbitration committee believed there was no applicable Trade Rule which governed this dispute, as there was no contract existing directly between The Andersons and Cooperative Elevator Co. However, the arbitrators believed there were two central questions to be resolved to arrive at an equitable settlement of this dispute:

1. Was Cooperative Elevator Co. correct in attempting to change its load-out rates?

The arbitrators unanimously agreed that Section 19(b)(2) of the UGSA contract was applicable in this situation and allowed the storing warehouse to change its storage and load-out rates if the goods were not shipped within 60 days of the issuance of the loading order by CCC. It should be noted that this provision of the UGSA contract has since been amended, but the quoted section was applicable at the time of the dispute.

2. Was Cooperative Elevator Co. correct in attempting to charge a load-out rate of 25 cents per bushel?

Cooperative Elevator Co. presented evidence that as a state-licensed warehouse in Michigan, it did not have a published tariff that would govern in the absence of UGSA rates. Neither party presented any evidence as to "market" load-out rates in this area at the time. Thus, the arbitrators

were left to determine if such a charge was equitable under these circumstances.

The arbitration committee believed there was fault on both sides in this dispute. First, The Andersons failed to follow the procedures recommended by ASCS for third-party purchasers of CCC grain by not contacting the storing warehouseman prior to purchasing the corn. This failure led to some animosity between the two parties before any shipments had been made. Second, Cooperative Elevator Co. apparently used the UGSA provisions as a mechanism to "punish" a third-party buyer after the initial 60-day rate-protection period in the contract expired.

Therefore, given the particular facts of this dispute, the arbitrators found the following to be an equitable settlement for both parties:

■ Cooperative Elevator Co. to repay to The Andersons 97,919.56 bushels at \$0.075 per bushel = \$7,343.97 plus interest at 9 percent from Jan. 10, 1988 until the date payment is made.

■ Cooperative Elevator Co.'s counterclaim was denied in its entirety.

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

J. Stephen Lucas, *chairman*
Louis Dreyfus Corp.
Stamford, Conn.

Warren Gerdes
Farmers Cooperative Elevator Co.
Buffalo Lake, Minn.

Burnie Wilhelm
Cargill Inc.
Minneapolis, Minn.

Arbitration Appeals Case Number 1650

Appellant: Cooperative Elevator Co., Pigeon, Mich.

Appellee: The Andersons, Maumee, Ohio

The Arbitration Appeals Panel, individually and collectively, reviewed all evidence submitted in Arbitration Case Number 1650. It also reviewed the findings and conclusion of the original Arbitration Committee.

The Arbitration Appeals Panel generally agreed with the facts in the case as presented by the original Arbitration Committee. But the Appeals Panel differed in the amount of the award. The Arbitration Appeals Panel reached its decision for the following reasons:

■ No evidence was presented of the existence of any state or federal law or regulation that would limit the elevation or storage charges a Michigan elevator can assess for these services.

■ Both parties agreed Section 19(b)(2) of the UGSA contract was applicable in this situation and allowed the warehouseman to change the storage and load-out rates if the goods were not shipped within 60 days of the issuance of the loading order by CCC. This was the version of the UGSA contract in effect at the time of shipment.

■ All the evidence and arguments presented clearly underscored that the Cooperative Elevator Co. did nothing to impede the timely execution in loading out The Anderson's grain. That the grain was not shipped prior to the expiration of the 60-day rate-protection period clearly was The Andersons' risk and responsibility.

■ The Cooperative Elevator Co.'s complaints regarding lost storage and merchandising income were totally without merit in this case.

■ In this case, no contract existed directly between the appellant and appellee. The only contract that existed was between CCC and the Cooperative Elevator Co. By virtue of this contract, certain known rights were conveyed to the third-party buyer.

■ Market practice was of little help in this case, as elevation charges vary considerably throughout the United States. No evidence was presented to identify a market practice that would directly relate to this case.

The Decision

The Arbitration Appeals Panel considered this as a unique situation, in that apparently no warehouse tariffs, laws, rules or regulations existed that would define or limit the charges.

Therefore, the Arbitration Appeals Panel found that the appellant was entitled to keep the 25-cent-per-bushel load-out and the appellee's claim was denied. The appellant's claim for additional damages was denied.

Richard A. McWard, *chairman*
Bunge Corp.
St. Louis, Mo.

Duane Fischer
Scoular Grain Co.
Omaha, Neb.

John McClenathan
Growmark Inc.
Bloomington, Ill.

Paul Krug
Continental Grain Co.
Chicago, Ill.

Patrick Williams
Great River Grain Corp.
St. Joseph, La