



Arbitration Decision

National Grain and Feed Association

May 25, 1989

Arbitration Case Number 1654

Plaintiff: Dorothy Weaver, Clare, Ill.

Defendant: Percy Grain Services Inc., Clare, Ill.

Statement of the Case

On Feb. 10, 1988, Percy Grain Services Inc. entered into a contract with Dorothy Weaver to buy a specialty-type soybean which she would produce on 155 acres. The delivery period was by Nov. 15, 1988 at a price of November option plus 15-cents-per-bushel. Percy was to supply the seed. Both parties signed the contract.

Percy Grain Services Inc. is a family owned grain operation whose major business is contracting soybeans for the Japanese food industry. Percy Grain Services Inc. contracts with local farmers to produce these specific varieties.

Prior to Percy Grain Services Inc. contracting with Weaver, the two parties had been involved in various disputes unrelated to the aforementioned contract. These disputes continued after the contract was entered into.

On April 18, 1988, Percy Grain Services Inc. unilaterally canceled its contract with Weaver, stating that the various disputes impaired its ability to conduct business. In addition, the company refunded \$2,126.78 Weaver had paid for the specialty seed beans.

Subsequently, Weaver planted another variety of seed beans. The plaintiff claimed the original contract was breached and that damages were in order. The plaintiff claimed that had she grown the specialty soybean variety originally contracted, her yield would have averaged at least 44.3 bushels per acre. She claimed the market price for soybeans at the Illinois River was 28-cents-per-bushel less than the November option versus

the contracted 15-cents-per-bushel premium. In addition, trucking of 14 cents per bushel, storage of 2 cents per bushel, handling charge of 10-cents-per-bushel in and 10-cents-per-bushel out would result in damages of 79 cents per bushel. This multiplied by a yield of 44.3 bushels per acre on 155 acres would result in damages of \$5,424.53.

The Decision

The arbitration committee unanimously agreed that Percy Grain Services Inc. breached the contract. Grain Trade Rule No. 41 states: "The specifications of a contract cannot be altered or amended without the expressed consent of both buyer and seller."

The fact that the two parties were engaged in various disputes apart from the contract were irrelevant to the case. The plaintiff in no way had breached any of its contractual obligations pursuant to this contract. Therefore, damages were in order in favor of the plaintiff.

The Award

The arbitrators were faced with three issues concerning damages: 1) What was the quantity of soybeans eligible for a premium?; 2) What was the economic loss in marketing regular commercial soybeans versus the specialty soybean?; and 3) How much of Weaver's production was of acceptable quality because of the drought of 1988?

Concerning the first issue, the plaintiff claimed that had she planted the specialty soybeans, her yield would have been higher. The arbitrators disagreed. The proven

yields on the land are the best estimates of production. Weaver determined that the actual yield on her farm was 26.1783 bushels on 83 acres and 37.679 bushels on 72 acres.

Second, the arbitrators established market damages on the day the contract was breached. At that time, the Illinois River market was 16-cents-per-bushel less than the November option. The premium under the original contract was 15-cents-per-bushel more. Trucking was 15 cents per bushel. This amounted to a market loss of 46 cents per bushel on 4,885.68 bushels. No storage and handling charges were due.

Third, in that the contract was breached by Percy, the arbitrators ruled that 100 percent of production, based upon proven yields, was eligible for the premium.

For the above reasons, the arbitration committee

awarded the plaintiff 46 cents per bushel on 4,885.68 bushels for a total award of \$2,247.42. Interest was to accumulate from Nov. 15, 1988 until paid at 11 percent.

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

David Kuk, chairman
Indiana Farm Bureau Cooperative
Association Inc.
Indianapolis, Ind.

Patricia Collins
Didion Inc.
Johnson Creek, Wis.

Robert O'Brock
MidStates Terminals Inc.
Toledo, Ohio