



Arbitration Decision

National Grain and Feed Association

April 26, 1990

Arbitration Case Number 1660

Plaintiff: Louis Dreyfus Corp., Overland Park, Kan.
Defendant: Fred Webb Inc., Greenville, N.C.

Statement of the Case

On April 17, 1989, the plaintiff, Louis Dreyfus Corp., sold the defendant, Fred Webb Inc., 197,214.10 bushels of U.S. No. 2 yellow grain sorghum. The sorghum was obtained by Louis Dreyfus Corp. in-store at Fred Webb Inc.'s warehouse through a swap transaction executed by the U.S. Department of Agriculture's Commodity Credit Corporation (CCC). CCC acquired the grain sorghum from Louis Dreyfus Corp. in a swap transaction to meet projected export needs.

Fred Webb Inc. stated that Louis Dreyfus Corp. represented that the sorghum would be released by CCC between May 1, 1989 and May 15, 1989. Louis Dreyfus Corp. stated it represented the probable CCC release dates would be May 15, 1989 through June 15, 1989.

The facts indicate that CCC did not immediately release the in-store sorghum sold by Louis Dreyfus Corp. to Fred Webb Inc. The scheduled loading of the grain swapped with CCC by Louis Dreyfus Corp. for export at the Gulf was delayed. CCC delayed the release of the sorghum sold in-store to Fred Webb Inc. by Louis Dreyfus Corp. during this period.

Fred Webb Inc.'s confirmation stated for ship-

ment: "Wire transfer upon presentation of draft and wire release from CCC." Louis Dreyfus Corp.'s confirmation stated for shipment period: "Upon release from CCC." Both confirmations were signed by representatives from each company.

On May 24, 1989, Fred Webb Inc. informed Louis Dreyfus Corp. by letter that a problem existed on its sale of the sorghum to other parties based upon the expected release period. Fred Webb Inc. stated it had agreed upon a May 1 to May 15, 1989 release, and said it would "work with" Louis Dreyfus Corp.

On June 12, 1989 and June 29, 1989, wire releases were received from CCC and were presented to Fred Webb Inc. Upon release, Fred Webb Inc. paid the drafts less 53-cents per bushel for "late release," an amount the company said was determined as follows: 23-cents per bushel attributable to the market difference and 30-cents per bushel attributable to handling and freight charges on subsequent crop it said was necessitated by the occupation of space by the sorghum.

The Decision

The arbitration committee ruled that Fred Webb Inc. was not entitled to the 30-cent-per-bushel handling and freight charge assessment. If Louis Dreyfus Corp. had not executed the swap, Fred Webb Inc.

would have had the sorghum in-store during wheat harvest. Therefore, the situation was no different than if no transaction had occurred.

As for the 23 cents per bushel in claimed damages from nonperformance of the contract, the arbitrators determined Fred Webb Inc.'s letter may or may not be construed as notice of nonperformance. If it was notice, the arbitration committee must determine whether Louis Dreyfus Corp. was in fact performing outside the bounds of the contract. The arbitrators determined that the confirmations exchanged were in agreement and that Louis Dreyfus Corp. performed within the bounds of the documents that were exchanged and signed; that is, the sorghum was released to Fred Webb Inc. "upon release from CCC."

The Award

The arbitration committee found in favor of the plaintiff, Louis Dreyfus Corp., in the amount of \$83,558.95 with interest to accrue from June 17, 1989, plus \$20,964.52 with interest to accrue from June 30, 1989. The interest rate awarded was 11 percent per annum.

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

John Fletcher, *Chairman*
Fletcher Grain Co. Inc.
Marshall, Mo.

John Heck
Scoular Grain Co.
Omaha, Neb.

Bill Dodds
The Andersons
Maumee, Ohio