



Arbitration Decision

National Grain and Feed Association

April 16, 1992

Arbitration Case Number 1676

PLAINTIFF: Texas Sesame (Archer Daniels Midland Co.), Muleshoe, Texas

DEFENDANT: Wabash Elevator, Co., Uniontown, Ky.

Statement of the Case

On March 26, 1990, Texas Sesame, a division of Archer Daniels Midland Co., Muleshoe, Texas, and Wabash Elevator Co., Uniontown, Ky., entered into a contract (No. 1214P) to purchase two barges -- or 105,000 bushels -- of U.S. No. 1 white corn, at \$3.30 per bushel, CIF NOLA, for shipment within 60 days, at buyer's call.

On March 28, Wabash Elevator Co. applied barge #899 to Texas Sesame. It was agreed by both parties that this barge was to be sold out, and a later barge applied and shipped to Brownsville, Texas. Contract amendments subsequent to the original contract confirmed this agreement and changed the delivery point to Brownsville, Texas (with agreed freight differentials).

Texas Sesame agreed to supply two barges to Wabash Elevator Co. for loading during the week of April 15, 1990, based upon agreements reached on March 29. However, Wabash Elevator Co. informed Texas Sesame that it was unable to load the barges. On May 3, 1990, both parties agreed to cancel the barges and extended the contract to May 31, 1990. On May 24, 1990, Texas Sesame was informed in writing by Wabash Elevator Co., that it was unable to originate contract grade white corn. Wabash Elevator Co. offered to provide new-crop white corn when it became available. In this same correspondence, Wabash Elevator Co. indicated it would need to cancel the contract if Texas Sesame was unable to extend the contract to delivery of new-crop white corn.

On June 18, 1990, Wabash Elevator Co. was notified by wire that Texas Sesame intended to cancel the contract, pursuant to NGFA Grain Trade Rule 10.

Texas Sesame invoiced Wabash Elevator Co. on June 20 for \$71,400. This amount represented the difference between the original price of \$3.30 per bushel, and \$3.98, Texas Sesame's estimate of fair market value on June 19, 1990.

Wabash Elevator Co. refused to pay any portion of the invoice, contending that the fair market value was \$3.32 per bushel based upon the Commodity Credit Corp.'s published value for white corn basis Evansville, Ill., adjusted for elevation and freight. Wabash Elevator Co. counterclaimed for \$2,650. This amount represented the difference between \$4,750 -- an amount owed by Texas Sesame for the settlement of two earlier, unpaid barges -- and Wabash Elevator Co.'s estimate of the fair market value of \$3.32 and the original contract price of \$3.30.

Subsequent to this date, both parties agreed in writing that the sole issue to be arbitrated was the establishment of the fair market value on June 19, 1990.

The First Decision

The original arbitration committee established a fair market value of \$3.33 per bushel. This value was based upon a review of market prices for food-grade, U.S. No. 2 white corn, using the CCC board price at Evansville, Ind., plus reasonable freight and elevation to the Gulf via barge.

The Appeal

On June 21, 1991, Texas Sesame requested that the original award be invalidated because prior to making the original decision the chairman of the original arbitration committee left his employer, which was a NGFA member firm, and thus ended his association with the NGFA.

Additional grounds for appeal by Texas Sesame were based upon arguments regarding the establishment of fair market value on the date of cancellation.

The Decision on Appeal

The Arbitration Appeals Panel judged, unanimously, that the original decision was invalid because of the ineligibility of one of the original arbitrators.

The original arbitration decision was remanded to the NGFA arbitration committee for reconsideration.

Decision of the Second Arbitration Committee

The second arbitration committee appointed to consider this case determined that the issue to be arbitrated was the fair market value on the date of cancellation. Despite the lengthy and compromised process of the original arbitration, the plaintiff and defendant agreed that this was the sole issue to be resolved.

Technically, it would have been correct for Texas Sesame to cancel the contract the day following contract expiration. However, Wabash Elevator Co. offered no objection to using June 19, 1990 as the cancellation date.

It was the opinion of the arbitrators that the most reasonable and compelling evidence of fair market value was represented by an actual trade of white corn on June 14, 1990 between Bartlett and Co. and Hoeper Feed and Grain Co. While this trade occurred outside of the specified date of June 19, 1990, the committee believed its shipment period, delivery terms and contract specifi-

cations were sufficiently similar to establish a reliable estimate of value.

It was the decision of the second set of arbitrators that the original arbitration committee relied much too heavily on "anecdotal" evidence of value; more specifically, the CCC generic certificate terminal market grain value. This indicator widely was regarded to be for informational purposes only, and seldom constitutes a legitimate bid or ask price, especially for such a thin and specialized market as white corn. Other price indicators offered by the defendant were judged to be vague, dissimilar in terms and specifications, and non-proximate in time, and thus were viewed to be of little value in establishing fair market value.

With appropriate freight, the second arbitration committee established the fair market value to be applied for the settlement of the cancellation to be \$3.52 per bushel. Based upon the difference to the original contract value, Wabash Elevator Co. owed Texas Sesame \$23,100, plus interest at the rate of 10 percent per annum from June 20, 1990. For settlement of barges applied prior to the barges in dispute, Texas Sesame owed Wabash Elevator Co. \$4,750.72, plus interest at the rate of 10 percent per annum from the bill of lading date on the original application.

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

James McKinstry, *Chairman*
The Andersons
Champaign, Ill.

Al Dewitt
Demeter Inc.
Fowler, Ind.

Jerry Osborne
ConAgra Flour Milling Co.
Omaha, Neb.