



Arbitration Decision

National Grain and Feed Association

September 10, 1992

Arbitration Case Number 1690

PLAINTIFF: Louis Dreyfus Corp., Wilton, Conn.

DEFENDANTS: Peavey Co., Minneapolis, Minn.
Union Equity Co-operative Exchange, Enid, Okla.

Statement of the Case

On Dec. 27, 1990, Louis Dreyfus Corp. (plaintiff) purchased from Union Equity Co-operative Exchange (defendant) 95,000 bushels of U.S. No. 2 hard red winter wheat, CIF New Orleans, destination official weights, origin official inspection, with a shipment period of Jan. 1-15, 1991.

Merchants Transportation Inc. ("Merchants") issued a bill of lading for barge ATC-1205 loaded with 49,483 bushels of wheat by Union Equity, received at Rosedale, Miss., dated Jan. 15, 1991. On Jan. 18, 1991, Union Equity applied the barge to Louis Dreyfus in partial fulfillment of its contract. On Jan. 22, 1991, Louis Dreyfus sold to Peavey Co. (defendant) 50,000 bushels of U.S. No. 2 hard red winter wheat, CIF New Orleans, destination official weights, origin official inspection, spot/afloat shipment. On Jan. 23, 1991, Louis Dreyfus applied barge ATC-1205 to Peavey in fulfillment of its contract. Advances were billed and paid promptly in both cases.

On Jan. 31, during discharge, Peavey found a portion of the wheat to be water damaged. Therefore, it left in the barge a quantity of out-of-condition wheat estimated on the official grain weight certificate to be 656,100 pounds. Surveyors were appointed to represent Peavey, Merchants and Union Equity. Louis Dreyfus was not notified and learned of the problem only during the final settlement process.

Peavey claimed damages in the amount of

\$18,805.29 for the out-of-condition grain from the carrier, Merchants, which refused to pay. Peavey subsequently claimed this amount from Louis Dreyfus, which claimed it in a string from Union Equity. Union Equity refused to pay Louis Dreyfus; Louis Dreyfus subsequently refused to pay Peavey.

On March 18, 1991, Union Equity issued its final invoice to Louis Dreyfus, using the official weight certificate that included both an official net weight unloaded and a Federal Grain Inspection Service estimate of the pounds of wheat left in the barge. On or about April 3, 1991, Louis Dreyfus -- not aware yet of the water damage -- paid the invoice in full to Union Equity and in turn issued its final invoice to Peavey. Peavey refused to pay Louis Dreyfus's invoice, claiming to have rejected the remainder of the water-damaged cargo.

Louis Dreyfus asserted that it was in the middle of a "string" trade, and that the loss from the water-damaged wheat should be borne either by the carrier, the receiver or the shipper, but not by the firm in the middle of the string. Louis Dreyfus requested that the arbitrators rule that Peavey pay its final invoice for \$19,266.30, plus interest from April 3, 1991 until the date of the arbitration award. Alternatively, if the arbitrators ruled that Peavey did not have to pay Louis Dreyfus's final invoice amount, Louis Dreyfus requested that Union Equity be directed to return the amount Louis Dreyfus paid to Union Equity for final invoice on April 3, 1991, plus interest, until the date of the arbitration award. Louis Dreyfus also requested

that the cost of the arbitration be reimbursed to Louis Dreyfus by either Peavey or Union Equity.

Based upon its rejection of the remainder of the water-damaged cargo, Peavey counterclaimed and crossclaimed against Louis Dreyfus and Union Equity for damages, including the value of the wheat not delivered against the contract, interest thereon, arbitration costs and reasonable attorneys fees.

Union Equity and Louis Dreyfus each contended that all terms and conditions of their sales contracts had been met and payment was due. Peavey asserted, quoting extensively from the Uniform Commercial Code, that its CIF seller, Louis Dreyfus and/or Union Equity, had not provided proper insurance as required under CIF contract terms. Extensive cargo survey information and arguments also were presented.

The Decision

In reaching their decision, the arbitrators recognized their first responsibility was to enforce the terms of the contract. When the contract terms are insufficient on their own to decide the case, arbitrators are to rely next upon the Trade Rules, and thirdly, trade practice. Reliance upon the Uniform Commercial Code or any other statutory basis usually comes only after the first three sources have proved insufficient.

The arbitrators agreed unanimously that the terms of the Louis Dreyfus sales contract had been properly fulfilled and "title as well as risk of loss and/or damage" had passed to Peavey in accordance with NGFA Barge Trade Rule 10 with the "transmittal of wire, telex, or written shipping instructions by the seller to the carrier in accordance with buyer's instructions."

The arbitrators, also agreed unanimously that Louis Dreyfus provided proper cargo insurance in the form of a "Cargo Insured Bill of Lading" in accordance with NGFA Barge Trade Rule 4(b). Further, the arbitrators noted it is standard industry practice for the owner of the cargo to file a claim for cargo loss and/or damage with the carrier, including arbitration

or legal action against the carrier and/or its insurance company if necessary.

Title clearly had passed to Peavey well before the damage was discovered. Thus, the arbitrators unanimously found in favor of the plaintiff, Louis Dreyfus, against the defendant, Peavey. Peavey's counterclaim against Louis Dreyfus and crossclaim against Union Equity were denied.

The Award

In determining the award, the arbitrators had to decide which weights should be used in settlement, the official net weight unloaded combined with the FGIS-estimated portion left aboard, or the official net weight unloaded combined with the salvage truck weights. The arbitrators decided upon the former because the shipper was not notified of, nor represented at, the salvage operation and no details were provided as to the method of transfer or to support the accuracy of the salvage weights.

Therefore, the arbitrators found that Peavey owed Louis Dreyfus the amount of its final invoice, \$19,266.30, plus interest on this amount at the rate of 7.46 percent per annum (average prime interest rate of the 30 largest U.S. banks, April 3, 1991 through July 22, 1992) from April 3, 1991 until the date of payment.

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

George Prochaska, Chairman
Bunge Corp.
St. Louis, Mo.

James M. Cook
Gulf Coast Grain
Finley, Tenn.

Mark St. Clair
Consolidated Grain & Barge Co.
Cincinnati, Ohio