



# Arbitration Decision

National Grain and Feed Association

October 22, 1992

## Arbitration Case Number 1692

**Plaintiff:** Central States Enterprises Inc., Fort Wayne, Ind.  
**Defendant:** Blanchard Valley Farmers Cooperative Inc., Findlay, Ohio

### Statement of the Case

On June 27, 1991, Central States Enterprises Inc. (plaintiff) purchased through R.F. Cunningham & Co., as broker, 165,000 bushels of U.S. No. 2 soft red winter wheat for last-half July shipment from Blanchard Valley Farmers Cooperative Inc. (defendant). On June 28, 1991, the parties agreed to upgrade the contract to 198,000 bushels and to increase the price of the entire contract by 0.05 cents per bushel. An adjustment also was made to the test weight premium scale at that time.

A 60-car unit train was duly shipped against the contract on July 30, 1991. Blanchard Valley Farmers Cooperative Inc. invoiced on the date of shipment and Central States Enterprises Inc. paid in full by wire transfer on Aug. 1, 1991. Central States subsequently determined that an error had been made in calculating test weight premiums and invoiced Blanchard Valley Farmers Cooperative Inc. on Aug. 19, 1991 for \$3,973.09. Blanchard Valley Farmers Cooperative Inc. maintained that the test weight premiums had been determined correctly and refused to pay the invoice. This test weight issue is the sole dispute involved in this arbitration case.

The broker's confirmation sent to both parties addressed test weight as follows: "58# MIN PER CAR, 1¢ 58-59#, 2¢ EA 1/2 ABOVE." Test weight language in Central States Enterprises Inc.'s purchase confirmation was nearly identical: "1

*CNT EA 1 LB T.W. PREMIUM 58 TO 59, 2 CNTS EA 1/2 LB. T.W. PREMIUM 59-60."* Central States Enterprises, Inc. agreed that the 60-pound test weight limit was removed when the contract was upgraded. Blanchard Valley Farmers Cooperative Inc. apparently sent no contract confirmation, as required by NGFA Grain Trade Rule 6. But it did return Central States' confirmation, crossing out "59-60" and inserting "59 and above."

Blanchard Valley Farmers Cooperative Inc. submitted evidence that it called the broker after receiving the confirmations. However, no evidence was submitted showing that Blanchard Valley Farmers Cooperative Inc. immediately contacted Central States Enterprises Inc. by wire or telephone upon receiving the confirmations to discuss any changes to the contract, as required by NGFA Grain Trade Rule 6(b). In addition, the arbitrators interpreted the effect of Blanchard Valley Farmers Cooperative Inc.'s change in Central States Enterprises Inc.'s confirmation language to be removal of the 60-pound cap on test weight premiums, rather than a change in the method of calculating test weight premiums. All cars applied to the contract exceeded 60 pounds test weight.

Central States Enterprises, Inc. claimed that the 2-cent-per-bushel test weight premium should have started at 59.5 pounds, with 2 cents additional premium awarded at each 0.5-pound increment

above. Blanchard Valley Farmers Cooperative Inc. insisted that the 2-cent premium should have started at 59 pounds with an additional 2 cents for each 0.5 pound increment or fraction thereof above 59 pounds.

### **The Decision**

The arbitrators concluded that both the broker's confirmation and the plaintiff's purchase contract clearly established that the 2-cent test weight premium applicable to shipments exceeding 59 pounds would begin at 59.5 pounds, with additional premiums at each additional 0.5-pound increment. The defendant's contention that trade practice required a different result was not supported by the submitted evidence, given the contractual language. There-

fore, the arbitrators unanimously found in favor of the plaintiff, Central States Enterprises Inc., in the amount of \$3,973.09, as claimed. The arbitrators also awarded interest in the amount of 7 percent from Sept. 19, 1991, until full payment is made by the defendant.

**Raymond F. Lottie, *Chairman***  
General Mills Inc., Minneapolis, Minn.

**Sam Hudnutt**  
The Andersons, Pottersville, Mich.

**James Hasler**  
Clinton Landmark Inc., Wilmington, Ohio