



Arbitration Decision

National Grain and Feed Association

March 30, 1995

Arbitration Case Number 1712

Plaintiff: The Scoular Co., Omaha, Neb.

Defendant: Pickrell Co-op Association, Pickrell, Neb.

Statement of the Case

On May 6, 1993, The Scoular Co. sold Pickrell Co-op Association 100,000 bushels of sorghum delivered by truck to Lincoln, Neb., for shipment during the period October through November 1993. The trade was brokered by Farmers Commodities Corp., Des Moines, Iowa.

The broker's contract specified "*Lincoln, Neb.*," as the delivery point. Scoular's contract specified "*AGP Lincoln.*" Pickrell did not issue a contract.

In June 1993, Scoular was advised by Pickrell that it had entered a joint venture with Ag Processing Inc., Omaha, Neb., and that it had been washed out of its contracts with AGP. Pickrell Co-op Association further advised that Scoular should deal directly with AGP and deliver the sorghum in Scoular's name alone.

The Scoular Co. subsequently purchased sorghum from two other parties and began to make delivery to AGP in Lincoln, Neb. The deliveries were made in Scoular's name only. AGP spotted out 30,656.43 bushels delivered into Lincoln, Neb., before Scoular found that the sorghum was being spotted out and corrected the billing to reflect it was to be applied against the Pickrell contract.

On Dec. 22, 1993, Pickrell bought in the balance of the undelivered contract with Scoular, totaling 77,451.80 bushels. Scoular claimed that the 77,451.80 bushels included the 30,656.42 bushels that were spotted out. Scoular claimed it was owed \$2,514.03, representing the difference between the spot price received from AGP and its contract with Pickrell, and \$17,320.88, representing the difference between the contract price and the cancellation price on the 30,656.42 bushels that Pickrell

bought in for Scoular's account to fill the contract. Scoular also sought interest, reimbursement of filing fees and other costs associated with the case.

The Decision

The arbitrators found in favor of the plaintiff, The Scoular Co.

In reaching its decision, the arbitrators found that the original broker's contract was never amended nor canceled, and, therefore, must stand.

Currently, there is no NGFA Grain Trade Rule requiring that billing instructions be provided in writing. Scoular delivered the sorghum as it was instructed to do by Pickrell to AGP in Scoular's name only. There was written documentation from Pickrell that it provided those instructions to Scoular. Scoular, then, in good faith billed the trucks to AGP without providing proper accounting instructions, but in accordance with Pickrell's request.

The Award

The arbitrators awarded the plaintiff, The Scoular Co. \$19,834.91, plus 8 percent interest from Jan. 1, 1994 until payment was made.

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

Andrew K. Riffe, Chairman
Stratford Grain Co.
Stratford, Texas

Butch Meibergen
W.B. Johnston Grain Co. Inc.
Enid, Okla.

Robert Vanderloo
Continental Grain Co.
Overland Park, Kan.

Arbitration Appeals Case Number 1712

Appellant: Pickrell Co-op Association, Pickrell, Neb.

Appellee: The Scoular Co., Omaha, Neb.

The Arbitration Appeals Committee, individually and collectively, reviewed all evidence submitted in Arbitration Case Number 1712. It also reviewed the findings and conclusion of the original arbitration committee.

The Arbitration Appeals Committee unanimously affirmed the decision of the Arbitration Committee in favor of the Appellee.

Submitted with the consent and approval of the Arbitration Appeals Committee, whose names are listed below:

John McClenathan, *Chairman*
GROWMARK Inc.
Bloomington, Ill.

Donald J. Cameron
Cameron Brokerage Co.
Charlotte, N.C.

Richard A. McWard
Bunge Corp.
St. Louis, Mo.

Thomas J. Hammond
Columbia Grain Inc.
Portland, Ore.

Robert W. Pegan
Central States Enterprises Inc.
Altamont Springs, Fla.