



# Arbitration Decision

National Grain and Feed Association

May 25, 1995

## Arbitration Case Number 1743

**Plaintiff: Eades Commodities Co., Omaha, Neb.**

**Defendant: Commodity Specialists Co., Cordova, Tenn.**

### Statement of the Case

This case involved the purchase by Eades Commodities Co. (Eades) of 25 truckloads (approximately 550 short tons) of bulk cottonseed hulls from Commodity Specialists Co. (CSC). Delivery was to be made in shipments of five loads each month from November 1993 through March 1994, F.O.B. Helena, Ark. The trade was made through a broker, Owen Smith Trading Co., Fort Smith, Ark. The broker's contract (number B7337) was dated Sept. 21, 1993, and stated that National Cottonseed Products Association (NCPA) Trading Rules were to apply.

No loads were shipped during November or December. However, Eades and CSC subsequently agreed that the contract would include the missed November and December loads. In January, February, March, and April, 335.20 tons were either shipped or washed, leaving a balance of 214.80 tons unshipped.

Eades notified CSC by FAX on April 15, 1994 of its intent to buy-in the unshipped loads for CSC's account if CSC did not provide load numbers for the unshipped loads. On April 19, Eades bought-in, through brokers, four loads (approximately 88 tons) at \$47.50 per ton and six loads (approximately 138 tons) at \$45 per ton, all F.O.B. Helena. Eades requested an award of \$4,864.50, plus interest.

CSC stated that it believed Eades did not have the right to buy-in the loads. CSC also requested that arbitration be

performed through the National Cottonseed Products Association, not the NGFA.

### The Decision

The arbitrators concluded that **NGFA Arbitration Rules** and **NCPA Trading Rules** applied. Both parties were NGFA Active members, and NGFA arbitration is compulsory among Active members pursuant to Article II, Sec. 3(f) of the NGFA Bylaws and Section 3(a)(1) of the NGFA Arbitration Rules.

While resolution of the parties' dispute was properly before an NGFA arbitration committee, the arbitrators also concluded that the parties' express contractual reference to NCPA Trading Rules controlled which trade rules were applicable to this transaction<sup>1</sup>. This determination is expressly provided for in the preambles to each set of the NGFA Trade Rules. Specifically, the preamble to the NGFA Feed Trade Rules provides that "these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule." Because the broker's confirmation specified that NCPA Trading Rules were to apply, the arbitrators applied the cited NCPA Trading Rules to this arbitration case.

In performing on the contract, Eades followed NCPA Rule 50, Sec. 2 and Rule 52 regarding notification and buy-in of a breached contract. Since the price for the tonnage bought-in was greater than the contract price, Eades was due compensation from CSC<sup>2</sup>.

<sup>1</sup> The arbitrators also noted that Section 3(c) of the NGFA Arbitration Rules provides that: "When Transactions by their express provision are made subject to the terms of a regularly organized Grain Exchange, the National Arbitration Committee shall render their decisions in accordance with the terms of such Board of Trade or Grain Exchange..."

<sup>2</sup> **Arbitration Committee Comments:** In this arbitration case, there was no substantial disagreement about the facts. There were no ambiguous issues in dispute. The amount involved in the dispute was approximately \$5,000. The arbitrators found it disturbing that the parties could not reach a negotiated settlement without resorting to arbitration.

## The Award

Damages were calculated as follows:

88 tons purchased at:	\$45.00 per ton
138 tons purchased at:	<u>\$47.50</u> per ton
Weighted average price:	\$46.53 per ton
Contract price:	<u>\$22.50</u> per ton
Amount due Eades (per ton):	\$24.03 per ton
Amount undershipped:	<u>214.80</u> tons
Amount due Eades:	\$5,161.64

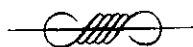
Interest of \$464.55 was calculated from April 15, 1994 to April 15, 1995 at 9 percent. Interest shall continue to accrue at a rate of 9 percent per annum until final payment to the plaintiff is made.

...ted with the consent and approval of the arbitration  
nose names are listed below:

**Steve Nail, Chairman**  
Farmers Grain Terminal, Inc.  
Greenville, Miss.

**Paul S. Dubravec**  
Advance Trading Inc.  
Bloomington, Ill.

**James J. Shanley**  
J.D. Heiskell & Co.  
Tulare, Calif.



## Arbitration Case Number 1711

**Plaintiff: Pickrell Co-op Association, Pickrell, Neb.**

**Defendant: Farmland Grain Division, Farmland Industries Inc., Kansas City, Mo.**

### Statement of the Case

On Jan. 20, 1993, the plaintiff, Pickrell Co-op Association, purchased from the defendant, Grain Merchandising and Management Inc. (GMMI)/Farmland Grain Division, 100,000 bushels of U.S. No. 1 soybeans basis (F.O.B.) Kansas City, UP transit for shipment October through November 1993.

The plaintiff's purchase was verified by two contracts. The first contract (number 43103), written by Farmers Commodities Corp. (FCC) on Jan. 20, 1993, stated the following terms: The buyer, Pickrell Co-op Association, and the seller, GMMI, for 100,000 bushels of U.S. No. 1 soybeans at a basis of plus 1/2 cents SX, F.O.B. KC UP transit for shipment October/November 1993. The second contract (number 697) written by GMMI on Jan. 20, 1993 revealed the same terms as FCC contract number 43103, except that it also established a cash price of \$5.985 per bushel. Contract number 697 included a remark, "Priced at board of \$5.98...."

The plaintiff/buyer, Pickrell Co-op Association, did not write a contract confirmation for either transaction represented by FCC contract number 43103 or GMMI contract number 697. Therefore, the committee was required to rely upon the written contracts, as submitted.

The Farmland, GMMI and FCC relationship in this case was explained to the arbitration committee in Farmland's

arguments: "Farmland first states that GMMI, one of the parties to the underlying contracts at issue in this case, was an Iowa corporation and a 50/50 joint venture between Farmland and Farmers Commodities Corporation ('FCC'). On Feb. 1, 1993, in preparation for the liquidation and dissolution of GMMI, Farmland purchased from GMMI and took title to all of GMMI's open grain contracts and inventory."

On March 23, 1993, Farmland issued sale contract number S79851 to confirm GMMI's previous contract number 697, as a sale of 100,000 bushels of U.S. No. 1 soybeans to Pickrell Co-op Association at a cash price of \$5.985 per bushel.

In early November 1993, Farmland applied 45,733 bushels of soybeans to its sale contract number S79851. At this time, Farmland refused to deliver additional soybeans on contract number S79851 because of a dispute that had developed on another contract with Pickrell Co-op Association.

The other contract in dispute was Farmland purchase contract number P79848 for 100,000 bushels of U.S. No. 1 soybeans at a cash price of \$5.75 per bushel. Farmland contract P79848, written March 23, 1993, replaced GMMI contract number 697 written Jan. 20, 1993.

The dispute involving Farmland contract number P79848 was not the issue presented by the plaintiff in this case, and,