



Arbitration Decision

National Grain and Feed Association

May 23, 1996

Arbitration Case Number 1758

Plaintiff: Monticello Grain Co., Monticello, Ill.

Defendant: Cargill Inc., Minneapolis, Minn.

Statement of the Case

On Oct. 27, 1994, Cargill Inc. purchased from Monticello Grain Co. 180,000 bushels of U.S. No. 2 yellow corn F.O.B. Seymour, Ill. Cargill issued the only contract between the two parties, both of which signed the contract in agreement of its terms. The contract stated that the NGFA's Grain Trade Rules were to govern.

The contract called for Cargill, the buyer, to provide equipment for loading the corn during the period Oct. 27-31, 1994. On Nov. 1, 1994, Cargill placed 53 empty rail cars at Monticello Grain's Seymour, Ill., facility. Monticello Grain loaded the cars without protest, invoiced Cargill for the shipment at the contract price and accepted payment as per the invoice.

Two months later, while discussing a similar issue on a separate contract with Cargill, Monticello Grain decided that it did not agree with Cargill's late placement of rail cars on the October contract. Monticello Grain filed for damages of \$14,400 against Cargill for non-performance of contract because of late placement of the rail cars on Nov. 1, 1994 (8 cents per bushel x 180,000 bushels = \$14,400).

Cargill denied Monticello's claim for damages, stating that no late charges or penalties were discussed at the time the rail cars were placed or loaded.

The Decision

Although numerous issues were raised regarding the railroad's ability to place cars and the existence of a cash inverse between last half October and first half November, there was only one issue that applied to this case -- compliance with NGFA Grain Trade Rule 10.

NGFA Grain Trade Rule 10, "Incomplete Shipment or Delivery," clearly provides the following:

"Buyers Conveyance: When grain is sold in Buyer's conveyance (truck and rail) and the Buyer fails to supply conveyance within the contract period, it shall be the duty of the Seller, after having given the Buyer notice to complete the contract, to elect either to: (a) agree with the Buyer upon the extension of the contract; (b) sell-out, by the exercise of due diligence, the unshipped balance for the Buyer's account; or (c) cancel the defaulted portion of the contract at fair market value for the unshipped balance.

"The term 'notice' as used in this rule shall mean verbal communication when possible, and in all cases by wire or other rapid written communication."

Monticello Grain submitted several arguments as to why Cargill should be considered in default of its contract. But concerning the core issue in this case, it was clear that the required timely notice of default never

The Award

was issued. Specifically, Monticello Grain originally accepted Cargill's placement of the cars and never issued a notice of complaint or default in accordance with NGFA Grain Trade Rule 10.

As specified in the trade rule, it is the obligation of an injured party to give notice to its trading partner and negotiate a settlement at the time a default occurs. It is not appropriate to retroactively change one's mind months later and seek compensation for what already has been settled.

Therefore, the arbitrators denied the claim of Monticello Grain Co.

Since the Monticello Grain Co. submitted the only monetary claim in this case, that claim was denied and no financial award was given to either party.

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

Jay O'Neil, *Chairman*
Manager
Bartlett and Co.
Kansas City, Mo.

Dennis Donnelly
Vice President
R.F. Cunningham & Co. Inc.
Hauppauge, N.Y.

Brad Haugeberg
General Manager
Plaza-Makoti Equity Elevator
Plaza, N.D.