



# Arbitration Decision

National Grain and Feed Association

April 10, 1997

## NGFA Arbitration Case Number 1770 ©

**Plaintiff:** R.E. Olson, Salt Lake City, Utah  
**Defendants:** LaBudde Feed and Grain Co., Grafton, Wis.  
Ackerman-Beardsley-Bennett Inc., Burlington, Vt.

### Statement of the Case

This case involved the f.o.b. purchases of bulk beet pulp pellets ("pellets") by the plaintiff, R.E. Olson, from the defendants. The plaintiff contended that the pellets were shipped in an "erratic and out-of-contract shipping schedule that resulted in rail and barge demurrage of \$7,850."

The parties in this case were not in agreement as to the contracting parties. The plaintiff contended that it purchased five rail cars of pellets from defendant Ackerman-Beardsley-Bennett Inc. and 13 rail cars of pellets, f.o.b. Michigan Sugar Points, for shipment "ASAP May 1995" to defendant Ackerman-Beardsley-Bennett Inc. "through the intervention of [the plaintiff]." Defendant LaBudde Feed and Grain Co. contended that it had no contractual relationship with the plaintiff. Ackerman-Beardsley-Bennett Inc., for its part, contended that it sold five rail cars of pellets to the plaintiff for shipment in May 1995. Ackerman further contended that the plaintiff "arranged for LaBudde to move (13) cars through Ackerman for ease of administering the contract."

The facts showed that 13 rail cars were shipped from Sebewaing, Mich., with June 8 through June 14, 1995 bill-of-lading dates. These rail cars arrived at a North Bend, Ohio, barge-loading point operated by Consolidated Grain and Barge Co. between June 13 and June 19,

1995. The remaining cars were shipped from Fremont, Ohio, one on June 19 and four on June 20, 1995. The five rail cars shipped from Fremont, Ohio, all arrived at the barge-loading point on June 25 or June 26, 1995.

While the evidence showed that the plaintiff requested that the North Bend facility's operator unload 13 rail cars of pellets on June 20 "to get the 13 cars off demurrage," none of the cars were off-loaded until June 26, when all 18 rail cars were available for loading onto the barge. This resulted in both rail and barge demurrage being assessed to the plaintiff's account.

### The Decision

The arbitrators thoroughly reviewed the documents and arguments submitted by each of the parties. It was concluded that the plaintiff originally contracted for last-half May shipment, basically a 15-day shipping schedule. Shipment was delayed. It was unclear whether the delay in shipment occurred with the plaintiff's express consent. Nevertheless, it did appear that the plaintiff was aware of, and not concerned by, the delay in shipment at that time.

The documents submitted for review in this case showed that all 18 rail cars of pellets were shipped between June 8 and June 20, 1995. Thus, a 15-day rail shipment period on the f.o.b. contracts was achieved,

<sup>1</sup> The confirmation of sale between Ackerman-Beardsley-Bennett Inc. and LaBudde Feed and Grain Co. provided that "National Grain and Feed Association rules to govern."

albeit a delayed one. The risk of incurring rail and/or barge demurrage at the North Bend facility were risks that the plaintiff assumed because of the f.o.b. terms of the contracts with the defendants.<sup>2</sup> Accordingly, the arbitrators found that the defendants were not liable for payment of demurrage at the rail destination/barge-loading facility.

### **The Award**

For the aforementioned reasons, the arbitrators denied the claim submitted by the plaintiff, R.E. Olson. Each party was directed to pay its own costs of the arbitration case.

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

**Michael W. Loy, *Chairman***  
Vice President, Grain Division/Corporate Treasurer  
Provico Inc.  
Botkins, Ohio

**Wayne Sandberg**  
President  
Agland Inc.  
Kansas City, Mo.

**Donald Gringer**  
President  
Gringer Feed and Grain Inc.  
Iowa City, Iowa

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<sup>2</sup> There are several ways of reducing the risk of demurrage when accepting shipments from multiple points. For example, a tighter shipping schedule or demurrage schedule could be written into the contract. In addition, the plaintiff could have scheduled in advance for multiple-day loading of the barge to eliminate the rail demurrage. In this case, the barge-loading facility had scheduled for all cars to be off-loaded on the same day.