



National Grain and Feed Association

Arbitration Decision

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June 22, 2006

Arbitration Case Number 2110

Plaintiff: Mid-Oklahoma Cooperative, Kingfisher, Okla.

Defendant: The Scoular Co., Minneapolis, Minn.

Statement of the Case

On Jan. 7, 2000, the plaintiff, Mid-Oklahoma Cooperative (Mid-Oklahoma), and the defendant, The Scoular Co. (Scoular), executed a written contract that involved the upgrading of Mid-Oklahoma's grain elevator at Kingfisher, Okla., for the loading of trains and merchandising of grain through that facility.

The Jan. 7, 2000 contract (hereinafter, "Agreement") provided for Scoular to through-put truck grain to trains at the Kingfisher facility at specified handling and storage fees. The initial term of the Agreement ended on May 31, 2004. Under the Agreement, Scoular had the option of two successive renewal terms of three years each, provided that Scoular was not in default. The Agreement also required that Scoular meet certain "Annual Minimums" for handling and storage fees during the initial term of the Agreement, but not during any renewal term.

The primary markets for rail wheat from Kingfisher were flour mills in Mexico and export elevators on the Texas Gulf coast. Both parties agreed that between January 2000 and May 2004, Scoular actively originated truck wheat from elevators within a 50-mile radius of Kingfisher, and that Scoular resold a significant amount of this grain to move directly by truck to destinations other than Kingfisher, primarily to barge-loading facilities on the Arkansas River and to a flour mill at Shawnee, Okla.

Both parties also agreed that by late November 2003, Mid-Oklahoma had notified Scoular that its reseller activities were regarded as putting it in default under the Agreement. Both parties further agreed that Scoular continued to trade in the area as a truck grain reseller after that time.

The Decision

The central dispute in this case concerned the meaning of paragraph 10(B) of the Agreement. Paragraph 10(B) stated as follows:

"Scoular agrees that, so long as Mid-Oklahoma is not in default hereunder, it will not own or operate a grain shipping facility with capacity to load trains of fifty (50) or more cars within a radius of fifty (50) miles from the Facility, nor will it enter into a grain marketing relationship within such radius that could reasonably be construed to compete against the grain marketing business conducted pursuant to this Agreement."

The arbitrators observed that based upon the written argu-

ments submitted by the parties, as well as the testimony presented by witnesses during the oral hearing in this case, the parties clearly attached significantly different meanings to this contract provision. The arbitrators further concluded that no specific meaning was attached to these terms elsewhere in the Agreement.

Mid-Oklahoma argued that the terms in paragraph 10(B) should be understood in their "ordinary and popular sense" and, therefore, Scoular was prohibited from having a merchandising program to buy grain within the 50-mile radius for markets other than Kingfisher. The arbitrators noted that Mid-Oklahoma's claims no longer included monetary damages by the time this case was submitted to the arbitrators. Rather, Mid-Oklahoma sought to have Scoular declared in default of the contract, and prevented from exercising a renewal option.

The arbitrators determined that Scoular argued for a more narrow and nuanced meaning of paragraph 10(B), which distinguished between “transactional relationships” (as characterized by Scoular) and “marketing relationships,” and in effect, excluded long-distance truck reseller activity from the competition faced by train-loading facilities. Scoular argued that, taken in context, an agreement such as the one it had with Mid-Oklahoma was necessary for a “marketing relationship” to exist, and that its “transactional relationships” with others did not compete with the business with Mid-Oklahoma at

Kingfisher. Rather, according to Scoular, the competition came from alternative markets seeking truck grain.

The arbitrators decided that Mid-Oklahoma’s understanding of the meaning of paragraph 10(B) was reasonable. The arbitrators determined that if Scoular intended to attach its particular meanings to the words used, it had the burden to clearly do so either in paragraph 10(B) or elsewhere in the Agreement. The arbitrators observed that in preparing the Agreement, Scoular did not do this.

The Award

Accordingly, the arbitrators ruled in favor of Mid-Oklahoma and ordered that Scoular was in default of the parties’ agreement prior to May 31, 2004, and, consequently, did not possess a renewal option.

Submitted with the unanimous consent of the arbitrators, whose names appear below:

Dave Hastings, Chair

General Manager
Ludlow Cooperative Elevator Co.
Ludlow, Ill.

Jeff Atkinson

Broker
Grain Service Corp.
Atlanta, Ga.

Dennis Inman

Vice President and Customer Solutions Leader
Cargill AgHorizons
Minneapolis, Minn.