NATIONAL GRAIN & FEED ASSOCIATION

Arbitration Decisions

February 11, 1976

ARBITRATION CASE #1520

PLAINTIFF: Tabor & Co., A Subsidiary of Archer-Daniels-Midland Co., Decatur, IL

DEFENDANT: Cargill, Inc., Minneapolis, Minnesota

The case involves a dispute between Tabor & Co. and Cargill, Inc. concerning fulfillment of several contracts covering nine barge loads of corn and two barge-loads of soybeans.

All shipments originated at Cargill's LaCrosse, Wisconsin elevator between 10/9/74 and 11/15/74. All were unloaded at Myrtle Grove, Louisiana between 11/3/74 and 12/13/74.

Tabor first notified Cargill of their complaint on 12/23/74.

The facts agreed upon by both parties were that all Tabor contracts specified "interior official" inspection and all Cargill corn contracts specified "first official class A" inspection and the Cargill soybean contract specified "official loading" inspection. The inspection certificates applied by Cargill were Class B --Warehouseman's Sample--Lot Inspection.

The dispute arose because Tabor had all barges officially inspected by a mechanical sampler during unloading and claimed these inspections to be the first official Class A inspections for purposes of contract settlement.

Cargill, while admitting the application of Class B inspections, submitted proof that Tabor had accepted such inspections on other barges before, during, and after the period of occurrence. Cargill further claimed Tabor's complaint first occurred after the last barge was unloaded allowing Cargill no possible means of rectifying the situation by any of several means available, such as on board official inspection or diversion.

Tabor provided elaborate documentation as to the deterioration of the market value of lower grades of corn during the period and offered to settle for 50% of the original claim "to avoid arbitration." Cargill made no attempt to refute the market data and, while not admitting any degree of guilt, offered "a token dollar settlement."

The Committee is of the opinion that Cargill did in fact fail to comply fully with the provisions of the contracts and did in fact violate the provisions of Barge Trade Rule 1(c). Tabor did not refuse the shipments prior to unloading, nor complain to Cargill in a timely manner. The out-turn, in-house mechanical sampler inspection does not fit their contract specifying "interior official" inspection, although in the strictest possible construction it is the "first official Class A" inspection on the lots. Tabor's claim further makes no allowance for the normal additional deterioration in grade through the additional mechanical handling at destination. This deterioration would have occurred regardless of the type of origin inspection and is not quantitatively determinable at this time.

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The Committee, therefore, found in favor of the plaintiff, Tabor & Company, to the extent that the defendant, Cargill, Inc., did violate the terms of their contracts and the Barge Trade Rules and the defendant should pay the plaintiff $25,000 in full settlement of the dispute, said amount being an arbitrary determination reflecting in part the market conditions at the time, in part the fact of a willful contract violation on the part of the defendant, and in part dilatory and imprecise behavior on the part of the plaintiff.

Arbitration Committee of the
NATIONAL GRAIN AND FEED ASSOCIATION

/S/ D. M. Mennel, Chairman
The Mennel Milling Company

/S/ Wayne Fisk
United Grain Corporation

/S/ James Layton
St. Louis Grain Corporation

August 20, 1975

DECISION OF THE ARBITRATION APPEALS COMMITTEE

ARBITRATION CASE #1520

The Arbitration Appeals Committee has reviewed the findings of the Arbitration Committee of the National Grain and Feed Association in the above case and affirms the decision of the Arbitration Committee in its findings that the Defendant, Cargill, Inc., did violate the terms of the contract and must pay the Plaintiff, Tabor & Co., a sum of money in full settlement of the dispute.

The Committe has considered the argument of the Defendant that the violation was not willful and in absence of proof to the contrary is willing to concede this point.

In consideration of this and of the fact established by the Arbitration Committee that the Plaintiff was dilatory and imprecise in bringing the violation to the attention of the Defendant, the Arbitration Appeals Committee hereby modifies the findings of the Arbitration Committee and fixes $12,500 as a reasonable amount for the Defendant to pay the Plaintiff in full settlement of the case.

Arbitration Appeals Committee of the
NATIONAL GRAIN AND FEED ASSOCIATION

/S/ Fredric H. Corrigan, Chairman
Peavey Company

/S/ Charles Holmquist
Holmquist Elevator Company

/S/ Madison Clement
Clement Grain Company

/S/ H. V. Nootbaar
H. V. Nootbaar & Company

/S/ Bruce Cottier
Bartlett & Company

January 20, 1976