

Arbitration Case Number 1526

Plaintiff: Fabbriche Riunite Amido, Glucosio Destrina S. p. A.
(A member of CPC/Europe, Brussels, Belgium)

Defendant: Dekalb County Exports Inc., Ottawa, Illinois

September 21, 1976

Statement of the Case

The dispute involved a disagreement as to whether the Defendant's delivery of corn in a contract with the Plaintiff was in conformity with the original contract as to waxy maize purity. The contract was for approximately 200,000 bushels of waxy maize corn. The amount of the claim was \$1,336,881.67, plus subsequent carrying costs.

The Decision

The arbitration committee, after reviewing the briefs prepared by the Plaintiff and the Defendant, and after considering the additional presentations of both parties, including witnesses, in the oral hearing July 26, 1976, finds that both the Plaintiff and Defendant must share in the loss which resulted from the disagreement as to whether the Defendant's delivery of corn in a contract with the Plaintiff was in conformity with the original contract as to waxy maize purity. The decision is based on substantial evidence that the Defendant failed to make full disclosure of material facts which it could reasonably be expected to make in connection with tests and retests for waxy purity on the barges in question; and also on the fact that the Plaintiff did in fact waive certain of its rights when it agreed to allow the Defendant one more sample and purity test at the time the barges were being loaded to the ocean vessel.

It is difficult for the arbitration committee to fix the amount of each share in this finding, but we believe the following is an equitable allocation and becomes part of our decision:

--That all the costs and expenses prior to loading the M.V. Francesco are assumed to have been agreed to and settled between the parties.

--That the Plaintiff will assume the responsibility of ownership and all costs connected therewith for the grain unloaded and in store in proportion to the contents of barges CNC 236-B and WBL 424-B.

--That the Defendant will assume responsibility of ownership and all costs, charges and expenses, including interest, connected with the grain unloaded and in store Venice, Italy, in proportion to the contents of barges CNC 212-B and CNC 265-B, or 101,418 bushels (Docs. 36B, 24 and 27), making reimbursement to the Plaintiff for those charges already paid by him on these barges (see Doc. 55 and later update to March 31, 1976). Charges beyond March 31, 1976 shall be payable by the parties as an incident of ownership according to the proportion above mentioned until disposition of the grain takes place. Interest shall be due to the Plaintiff for payments made in connection with barges CNC 212-B and CNC 265-B at the average prime rate charged by the First National City Bank, New York City, which we compute to be 7 1/8 percent from September 27, 1975 to the date the litigants are advised of this decision.

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

Fredric H. Corrigan, Chairman
Peavey Company, Minneapolis, Minnesota

Ronald Pratt
The Early & Daniel Company, Cincinnati, Ohio

Vernon Walters
Grain Processing Corporation, Muscatine, Iowa