



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

October 9, 1979

ARBITRATION CASE NUMBER 1551

Plaintiff: Vicksburg Terminal Elevator (VTE)

Defendant: Farmers Union Grain Terminal (GTA)

FACTS

On July 20, 1977, GTA sold VTE two (2) barges, 70,000 bushels each #2 White Oats for last half of November shipment. The confirmations exchanged, contained essentially the same terms except, Plaintiff's confirmations read under remarks "GTD to clear prior to close of Navigation," this specification was not included in Defendants confirmation. The GTA contract contained a "Force Majeure" clause. Both company's contracts were confirmed by the other without corrections. Defendant stated, and no counter denial by Plaintiff, that Plaintiff requested shipment be delayed and placed on the last tow from origin within contract time. Defendant accommodated; the barges departed GTA's St. Paul Elevator on November 30, 1977. The barges moved down river but were trapped by ice at Muscatine, Iowa, where because of ice conditions they spent the winter. The two (2) barges departed Muscatine on March 28 and 30, 1978. Plaintiff argued that the delay in movement of the barges to destination was Defendants responsibility and accordingly requested damages from Defendant of \$34,760.00 plus interest of ten percent (10%).

DECISION

The Committee, by unanimous agreement found in favor of the Defendant, Farmers Union Grain Terminal based on the following:

1. The clause "GTD to clear prior to close of Navigation" is confusing and ambiguous. Does it mean clear the shipping port or clear the entire river? We found that this clause is not standard Grain Trade Phraseology.
2. When VTE requested the delay of shipment, VTE took the risk of icing conditions on the river. Title and risk, in accordance with Barge Trade Rule No. 10, passes to buyer on issuance of a Bill of Lading.
3. GTA satisfied its obligation on the contracts by making shipment within the contract period.

Arbitration Committee of the National Grain and Feed Association.

/s/ R.T. Creekmore, Chairman, Indiana Grain Queen City Elevator,
Cincinnati, Ohio

/s/ Henry P. Fisher, Continental Grain Company, St. Louis, Mo.

/s/ John C. Terral, Lake Providence Port Elevator, Lake Providence, La.