NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

Arbitration Case Number 1592

Plaintiff: The Pillsbury Company, Minneapolis, Minnesota

Defendant: MFC Services, Madison, Mississippi

Statement of the Case

On March 16, 1982, the Plaintiff, The Pillsbury Company, sold two barges of corn, both of which were in port to the Defendant, MFC Services. The trade was confirmed by the Plaintiff's sale No. R1464 and the Defendant's purchase No. 1159. Also, confirmation No. 1530 was sent out through the broker -- Great Lakes Commodities -- who handled the trade. Both the Plaintiff's and the broker's confirmations called for origin official weights.

The two barges covered by the contract were OR-1120, with a billed weight of 52,233 bushels, and K-312, with a billed weight of 49,500 bushels. Barge K-312 was loaded at the Plaintiff's river facility at Cincinnati, Ohio, on Feb.24, 1982. The barge line, which cut the bill of lading on Barge K-312, was the Pillsbury Company Barge Line. The 101,733 contract bushels traded were the sum of the weights on the two barge bills of lading.

Both barges were unloaded at the Gulf by the use of a floating rig on March 17. The shipment was reloaded immediately onto an ocean-going barge. The ocean-going barge was subsequently unloaded on April 5, 1982.

On April 27, the Plaintiff sent notice to the Defendant that the bill of lading weight on barge K-312 of 49,500 bushels was incorrect and should have been 54,500 bushels. The weight on the barge (K-312) was arrived at by using draft readings of the barge. No weighing of any type -- official or unofficial -- took place at origin or destination. The Plaintiff submitted a claim for $14,550, which is the value of the 5,000 bushel increase in the bill of lading, plus interest and arbitration costs.

The Decision

The original confirmations of the trade called for origin official weights. These confirmations stood unquestioned until the Plaintiff and the broker disaffirmed the origin official weights in arbitration. There never was any agreement on whether the weights reflected in the bill of lading were supposed to be substantiated with origin weights or whether estimated weights were sufficient. Since the settlement of the barge has to be based upon some weight, the only weight available is the estimated weight as reflected on the original bill of lading.

The subsequent question was whether to allow the Plaintiff to increase the original estimated weight by 5,000 bushels because of a mistake in the calculation at the time of loading. Since more than two months elapsed from the time the barge was loaded until the Defendant was notified of the increase in the bill of lading weight, and that during this time the barge in question was unloaded and transferred to an ocean-going vessel which was also unloaded before the error became known, the arbitration committee believed the time for rectifying the error was past. The arbitration committee found in favor of the Defendant, MFC Services and awarded no monies to either party.

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

John McClenathan, Chairman
Growmark, Inc.
Bloomington, Illinois

R.T. Creekmore
The Early & Daniel Company, Inc.
Cincinnati, Ohio

Gary Mills
Cargill, Inc.
Peoria, Illinois