



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

May 26, 1983

## Arbitration Case Number 1598

Plaintiff: Louis Dreyfus Corporation, Shawnee Mission, Kansas

Defendant: AGRI Industries Inc., West Des Moines, Iowa

### Statement of Case

The dispute concerned the discounts applied to 10 hopper cars of off-grade wheat. Specifically the wheat was low test weight, and was shipped under three separate contracts basis delivered the Gulf. Louis Dreyfus Corporation was the seller and AGRI Industries Inc. was the buyer on all contracts.

All confirmations, including the broker's, stipulated a 1/2-cent discount for U.S. No. 2s, and made reference to discount scales for moisture and dark hard vitreous kernels. Both parties agreed to those discounts. In addition to the aforementioned terms, AGRI Industries' confirmations A3200 and A3204 stated, "AGRI's scale of discounts at time of shipment/delivery." This phrase was not a part of AGRI's contract A3549.

The cars in question did not have origin or first official grades, and were subject to destination grades. The Defendant did notify the Plaintiff that the contracts called for U.S. No. 2 hard wheat or better. The Defendant further noted that by applying cars without grades from a region that had been shipping low test weight, the Plaintiff was putting itself at great risk. The Plaintiff did not contest that it was put on notice concerning off-grade wheat on the contract, and admitted to having shipped grain below contract specifications.

The Plaintiff claimed that it was not advised of AGRI Industries' scale of discounts until settlement. It further stated that those discounts were exorbitant and in effect were double discounts since discounts were taken on both numerical grade and test weight. The Plaintiff also argued that AGRI Industries Inc. did not exercise due diligence in notifying the seller that the cars failed to meet grade according to contract terms. The Plaintiff also said AGRI Industries failed to report its objection to or acceptance of a discount, or to come to an agreement on that discount as required by the National Grain and Feed Association's Grain Trade Rule 17. The Plaintiff's claim was for \$1,047.17, basis normal market discounts plus interest.

The Defendant claimed its discount scale had been applied to millions of bushels of grain at its Houston elevator, and was customary and reasonable. The Defendant also asserted that it had applied Grain Trade Rule 17 at the time the cars of wheat were tendered by putting the Plaintiff on notice that the cars would have to grade U.S. No. 2 or better.

The Decision

The case raised two questions:

- Were the Plaintiff's rights protected according to Grain Trade Rule 17.
- Were the discounts used customary and reasonable.

It was the consensus of the arbitration committee that if the rights of the Plaintiff under Grain Trade Rule 17 were protected, then the question of whether the discounts were customary and reasonable would not be an issue. The Plaintiff's rights would have been protected if the Defendant had advised the Plaintiff of the discount scale and had agreement been reached at the time the Defendant put the Plaintiff on notice. The Plaintiff's rights also would have been protected had the Defendant followed Grain Trade Rule 17 after the cars were unloaded. The committee believed the Defendant's actions did not protect the Plaintiff's rights.

Although the Defendant's position was that the discount scale was customary and reasonable, it contradicted that assertion by also stating, "There is no question in my mind that the hard red winter wheat track trade does not usually encounter problems of double discounting."

The arbitration committee agreed that discounting both the grade and the factor is an exception rather than the norm in trade. If this type of discount scale were to be used, the seller should have been alerted when the trade was made or when the shipper was put on notice and, failing this, when the grade was known to the receiver as under Grain Trade Rule 17. Therefore, the arbitration committee unanimously ruled in favor of the Plaintiff, and used the AGR Industries Inc. discount scale for grade only to determine the award.

The Award

Thus, the arbitration committee made the following award. A total of the discount differences is shown below:

AT 306451	3,071.63 bushels	X	\$0.05 1/2	=	\$168.94
AT 311316	3,073.53 bushels	X	\$0.09 1/2	=	\$291.99
SFLC 801041	3,256.43 bushels	X	\$0.03 1/2	=	\$113.97
AT 306858	3,213.52 bushels	X	\$0.01 1/2	=	\$ 48.20
PLCX 18925	3,585.12 bushels	X	\$0.00 1/2	=	\$ 17.93
MKT 4150	3,345.87 bushels	X	\$0.01 1/2	=	\$ 50.19
MKT 4486	3,609.53 bushels	X	\$0.00 1/2	=	\$ 18.05
NOKL 3311	3,343.53 bushels	X	\$0.00 1/2	=	\$ 16.72
MKT 4211	3,383.33 bushels	X	\$0.00 1/2	=	\$ 16.92
MKT 4548	3,260.68 bushels	X	\$0.03 1/2	=	<u>\$114.12</u>
					\$857.03
			Interest	=	<u>80.53</u>
			Total Award		\$937.56

Lynn B. Olson, Chairman  
Continental Grain Company, Kansas City, Missouri

David McKee  
Collingwood Grain Inc., Hutchinson, Kansas

Keith Sorbo  
Cargill Inc., Denver, Colorado