



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

March 29, 1984

Arbitration Case Number 1605

Plaintiff: Keenan Cotton Gin and Grain Elevator, Dardanelle, Arkansas

Defendant: Growmark Inc., Chicago, Illinois

Statement of the Case

The plaintiff in this case purchased from the defendant through a broker two barges of corn, one on tow and one afloat, both destined for New Orleans. The barges were purchased at a premium basis delivered Dardanelle, Ark., and the defendant had bills of lading issued accordingly. When the barges arrived at the third lock up the Arkansas River, it was determined that the draft on both barges was too deep to allow further passage. Substitute barges with acceptable draft and also acceptable quality grain evidently were not available within the time limit required by the plaintiff. The plaintiff arranged for partial unloading of the barges to bring them within acceptable draft levels at a total cost of \$3,465.50, which it claimed from the defendant because the purchase and sale was made basis delivered Dardanelle, Ark.

The defendant's argument against the plaintiff's claim was based upon the fact that the trade was made for afloat barges not loaded specifically for movement on a restricted river. The defendant argued that if there are restrictions at the buyer's location, it is the buyer's responsibility to incorporate those restrictions in its trades, not the responsibility of the seller which is unfamiliar with the restrictions.

The Decision

The arbitration committee ruled that this dispute is governed by Barge Trade Rules 5 and 10. Barge Trade Rule 3, cited by the plaintiff, and Barge Trade Rule 4, cited by the defendant, are not applicable. Barge Trade Rules 5 and 10 are specific -- the seller is deemed to have fulfilled his obligation when title passes, which is when the buyer is furnished a validated bill of lading. When a bill of lading is validated, risk of loss or damage passes to the buyer. The committee, therefore, found for the defendant, Growmark Inc.

The committee further states that its decision is based upon its interpretation of the Trade Rules. The committee also stresses that traders dealing in restricted areas should include terms in their contracts that cover their unusual circumstances.

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

R.T. CREEKMORE, chairman
The Early and Daniel Co. Inc.
Cincinnati, Ohio

PATRICK WILLIAMS
Great River Grain Corp.
St. Joseph, La.

ROBERT PEYTON
Peavey Grain Companies
Minneapolis, Minn.