



Arbitration Decisions

December 11, 1986

Arbitration Case Number 1635

Plaintiff: DeBruce Grain Inc., Gladstone, Mo.
Defendant: Cargill Inc., Baton Rouge, La.

Statement of the Case

The plaintiff, DeBruce Grain Inc., sold the defendant, Cargill Inc., two barges (95,000 bushels) of U.S. No. 2 hard red winter wheat on Aug. 7, 1985 for shipment during first half of August 1985.

A dispute arose based upon the fact that the plaintiff attempted to apply to the defendant a barge (SCNO 8047) that the plaintiff believed was applicable but the defendant thought was inapplicable.

The disputed barge, which was loaded at Nebraska City, Neb., carried a bill of lading date of Aug. 7, 1985. The barge was graded at Wood River, Ill., on Aug. 5, 1985. The first attempted application was on Aug. 12, 1985 or Aug. 13, 1985, based upon conflicting testimony. The final attempt at application was on Aug. 14, 1985. The defendant contended that since the barge was graded at Wood River on Aug. 5, 1985, it could not have an Aug. 7, 1985 bill of lading date if it had loaded at Nebraska City, Neb. The defendant also contended that the plaintiff first tried to apply the barge with a July 27, 1985 bill of lading date but later changed it to Aug. 7, 1985.

The arbitrators believed that the dates associated with the sequence of events involved in the trade provided sufficient information to reach a decision. The dates and events are as follows:

<u>Date</u>	<u>Event</u>
July 27, 1985:	Bill of lading date the defendant claimed the plaintiff used when attempting to apply the barge on Aug. 13, 1985.
Aug. 5, 1985:	Bill of lading date the plaintiff claimed it used when attempting to apply the barge on Aug. 12, 1985.
Aug. 5, 1985:	Date of official grade certificate on Barge SCNO 8047 showing the barge was probed and graded at Wood River, Ill. It is important to note that Wood River, Ill., is located at mile 198 on the upper Mississippi River.
Aug. 7, 1985:	Date of actual bill of lading for Barge SCNO 8047 with a loading point of Nebraska City, Neb. It is important to note that Nebraska City, Neb., is at mile 562 on the Missouri River.
Aug. 12, 1985:	Date of attempted application of the barge from the plaintiff to the defendant as per the plaintiff.

<u>Date</u>	<u>Event</u>
Aug. 13, 1985:	Date of attempted application of the barge from the plaintiff to the defendant as per the defendant.
Aug. 14, 1985:	Date the plaintiff notified the defendant by telex that the plaintiff was cancelling the contract. The plaintiff resold Barge SCNO 8047 on this date at a 7 cent per bushel discount to the contract price and claims 7 cents times 47,500 bushels, or \$3,325 from the defendant.
Aug. 15, 1985:	Date the plaintiff claimed to have received a telex from the defendant declining acknowledgment of cancellation. The defendant did not make mention of this date in its argument and neither party furnished a copy of the telex.
Aug. 30, 1985:	Date the defendant claimed it was forced to buy in the defaulted portion of the contract. The defendant claimed paying a 1 cent per bushel premium over the contract price for the defaulted portion (53,557 bushels), or \$535.57 plus interest from Aug. 15, 1985.

The Decision

The arbitration panel believed that the custom of the trade dictated that the earliest date of a bill of lading would be the load date of the barge and the latest date of a bill of lading would be the pick-up date of the barge. The pick-up date would be pick-up from either the loading point of the barge or the normal origin fleeting area of the barge. Because Barge SCNO 8047 was graded at Wood River, Ill., on Aug. 5, 1985, it is obvious that the bill of lading had to have been issued prior to Aug. 5, 1985 because of the vast mileage difference between Nebraska City, Neb., and Wood River, Ill. Therefore, the arbitration panel unanimously agreed that the plaintiff did not have the right to apply Barge SCNO 8047 on contract on Aug. 12, 1985 because a valid bill of lading date according to practice of the trade would have predated the application date by more than seven days, as required by Barge Trade Rule 7(b).

However, the arbitration panel also unanimously agreed that the defendant did not properly adhere to Grain Trade Rule 10(b) in cancelling the contract. First half August barges could have been applied up until 11 a.m. on Thursday, Aug. 22, 1985. The defendant failed to notify the plaintiff to complete the contract and, in the opinion of the arbitrators, the defendant did not use due diligence by waiting until Aug. 30, 1985 to buy-in the defaulted portion of the contract.

Therefore, the arbitration panel decided unanimously in favor of the defendant, Cargill Inc. However, the panel decided that no award be given because the defendant failed to comply with Grain Trade Rule 10 in the disposition of the open contract balance.

Submitted with the consent and approval of the arbitration panel, whose names appear below.

Patrick M. Williams, Chairman	George Prochaska, Jr.	Tom Seibert
Great River Grain Corp.	Bunge Corp.	The Hubinger Co.
St. Joseph, La.	St. Louis, Mo.	Keokuk, Iowa