NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

April 28, 1988

Arbitration Case Number 1643

Plaintiff: Continental Grain Co., New York, N.Y.
Defendant: International Terminal Corp., Galena Park, Texas

Statement of the Case

This dispute involved a throughput agreement whereby International Terminal Corp. agreed to unload Continental Grain Co.'s grain at a Texas Gulf elevator and load Continental's grain to a vessel. The agreement called upon International Terminal Corp. to "protect sanctity of inbound grade and blend to reasonable extent of grade allowance on outbound shipments, including blending of CC and WOCL." Several types of grain were handled during an approximate one-year period.

The dispute arose over whether International Terminal Corp. was liable to maintain the protein in hard red spring wheat handled under this agreement. Approximately 9.87 million bushels inbound averaged 14.213 percent protein and outbound averaged 14.161 percent protein. Continental Grain Co. claimed a loss of $205,068 based upon the 0.052 percent protein discrepancy multiplied by a 40-cents-per-bushel adjustment per 1 percent protein scale at the Minneapolis Grain Exchange during the one-year period. International Terminal Corp. refuted Continental's claim, stating the agreement was to protect the grade only, and that protein was not a grade factor.

The arbitration panel found that Continental Grain Co.'s assertion that the Uniform Grain Storage Agreement's definition of quality should apply is not relevant, since the UGSA was not referenced in the agreement signed by both parties. International Terminal Corp. further stated no spring wheat was handled through the facility during the period other than that handled for Continental.

International Terminal Corp. filed a counter-claim against Continental for refusal to pay certain elevation charges and for late payment of other invoices. International Terminal Corp. requested a late payment penalty based upon a 9 percent interest rate.

The Decision

Protein testing is not a physical grade factor. While protein is an important determinant of the value of hard red spring wheat, the throughput agreement between the two parties was silent on protein obligations, resulting in a contractual abiguity.

Because the agreement was silent on protein obligations, the arbitration panel believed there was never an expectation by International Terminal Corp. to guarantee protein performance. Furthermore, there was no evidence that Continental Grain Co. broached the issue or expressed dissatisfaction with International Terminal Corp.'s performance until after nearly one year's experience, at which time Continental averaged proteins, inbound versus outbound, thus documenting a 0.052 percent discrepancy.

The arbitrators did not believe Continental Grain Co. made a convincing case as to how it was damaged. No evidence was presented demonstrating penalties for low protein vessel shipments. The extremely small deviation between inbound and outbound proteins appeared to the arbitration panel to be a very favorable cost to Continental of doing business.

For the aforementioned reasons, the arbitration panel decided unanimously in favor of the defendant, International Terminal Corp. International Terminal Corp.'s counter-claim against Continental for failure to pay certain elevation invoices and for late payment of certain other invoices was granted as follows:

- International Terminal Corp. requested interest on Continental's late payment of $127,101.68. This request was denied by the arbitrators based upon an "Agreement Regarding Reconciliation of Account and Arbitration" signed by both parties.
- Unpaid invoices in the amount of $95,394.78 still are owed to International Terminal Corp. The average invoice date is Feb. 20, 1987. Continental Grain Co. was directed to promptly pay International Terminal Corp. the principal amount plus 9 percent per annum simple interest from Feb. 20, 1987 until the date paid.
- A separate dispute regarding stevedoring and demurrage changes apparently was resolved by the parties. Therefore, Continental Grain Co. was directed by the panel to pay International Terminal Corp. the amount of $1,841.40 as agreed. No late payment penalty will apply.

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

L. Scott Hackett, *Chairman*
General Mills Inc.
Minneapolis, Minn.

Jim McIntosh
Union Equity Cooperative Exchange
Enid, Okla.

Duncan Russell
The Andersons
Maumee, Ohio