Arbitration Decision
National Grain and Feed Association

May 10, 1990

Arbitration Case Number 1662

Plaintiff: Rickel Inc., Kansas City, Mo.
Defendant: Lynn-Ette and Sons Inc., Kent, N.Y.

Statement of the Case

On Oct. 11, 1988, the plaintiff, Rickel Inc., purchased 79,837.53 bushels of Commodity Credit Corporation-owned corn in store at Lynn-Ette and Sons Inc.'s elevator at Kent, N.Y. On Feb. 2, 1989, Rickel Inc. bought an additional lot of 68,590.88 bushels of CCC-owned corn at Lynn-Ette and Sons Inc.'s elevator, which in this case shall be referred to as the "second contract." At that time, none of the previously purchased CCC-owned corn to which title had transferred had been loaded out of Lynn-Ette and Son Inc.'s elevator by Rickel Inc.

On Feb. 6, 1989, the defendant notified the plaintiff that as of Feb. 15, 1989, the load-out rate for the corn would be increased from the Uniform Grain Storage Agreement rate of 10 cents per bushel to 20 cents per bushel. No applicable state or federal warehouse license or tariff regulating handling rates existed at Lynn-Ette's elevator.

On Feb. 20, 1989, the plaintiff notified the defendant by telephone that it was requesting load out of the second contract of corn prior to the first contract. Neither party presented written documentation to substantiate this notification or acceptance of it. In so requesting this load-out procedure, the plaintiff expected to execute load-out of corn covered by the second contract within the 60-day load-out period granted for purchases of CCC-owned grain in the UGSA contract.

By April 17, 1989, a total of 80,724.97 bushels of the CCC-owned corn purchased by Rickel Inc. had been loaded out.

On April 3, 1989, the defendant submitted a bill to the plaintiff to cover the load-out charges owed as of that date. The defendant billed against the first contract awarded and this invoice was paid in full by Rickel Inc. On April 10, 1989, the defendant notified the plaintiff in writing that the load-out charges would increase to 20 cents per bushel for any CCC corn remaining in store for longer than 60 days after the date the second contract had occurred, which was dated Feb. 17, 1989.

By May 19, 1989, all but 5,652.30 bushels had been loaded out on both contracts. The defendant refused to load out the balance because of the plaintiff's unwillingness to pay the additional 10-cent-per-bushel load-out charge.

On Aug. 9, 1989, after several conversations, the plaintiff recommended that this dispute be settled through NGFA arbitration. On Oct. 4, 1989, the defendant agreed to arbitration. The remaining bushels of corn were sold in-store and the plaintiff paid the charges under protest.

The plaintiff claimed damages amounting to $17,778.77, plus interest. Of this amount, $14,842.84 represented the additional 10-cent-per-bushel load-out rate applied by the defendant after expiration of the 60-day clause of the UGSA contract. In addition, the plaintiff claimed 37-cents-per-bushel as market value deterioration during the same period on 5,632.60 bushels, totaling $2,084.06.

The defendant counterclaimed for a total of $3,054.63, representing the $854.63 balance due on the account, arbitration fees of $400 and legal fees of $1,800.

The Decision

The arbitration committee reached the following conclusions concerning this case:

- The plaintiff was negligent in not confirming in writing the load-out rate it believed had been agreed to originally with the defendant.

- The defendant was justified in increasing its load-out rate after expiration of the 60-day CCC load-out provision contained in the UGSA contract. Prior NGFA Arbitration Case No. 1650 clearly addressed this situation. The defendant did not impede the plaintiff from executing within the time frame called for under Section 19(b)(2) of the UGSA.

- The plaintiff was negligent in not confirming in writing its load-out preference concerning contract two before contract one on Feb. 20, 1989. In fact, on April 3, the plaintiff paid an invoice from the defendant that reflected the load-out of contract one before contract two.

- The plaintiff's claims of lost opportunity on merchandising grain is without merit.

- The defendant was negligent in not responding promptly on Aug. 9, 1989 to arbitration, at which time all costs could have been determined.

The Award

The arbitration committee therefore denied Rickel Inc.'s claim for $17,778.77.

However, the arbitrators believed that storage was not owed by Rickel Inc. for the period of Aug. 9, 1989 to Oct. 4, 1989. Therefore, the arbitrators found that the plaintiff, Rickel Inc., owes the defendant, Lynn-Ette and Sons Inc., $477.18, which represents storage charges that accrued until Aug. 9, plus interest at 11 percent from Oct. 4, 1989 until paid.

Additional damages on the counterclaim were denied.

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

David D. Kuk, *Chairman*
Indiana Farm Bureau Cooperative
Association Inc.
Indianapolis, Ind.

Sonia M. Buttino
Agway Grain Marketing
Syracuse, N.Y.

Keith Hainy
South Dakota Wheat Growers Association
Aberdeen, S.D.