



# Arbitration Decision

National Grain and Feed Association

December 9, 1993

## Arbitration Case Number 1703

**PLAINTIFF:** Louis Dreyfus Corp., Overland Park, Kan.

**DEFENDANT:** AGP Grain Cooperative, Omaha, Neb.

### Statement of the Case

The contested issues in this case emanate from the contractual payment requirements of a corn train transaction between AGP Grain Cooperative (AGP) and Louis Dreyfus Corp. (Dreyfus). On Dec. 18, 1991, Dreyfus purchased from AGP a 75-car unit of corn (approximately 262,500 bushels) delivered Clinton, Iowa, for shipment April 13-17, 1992 via the Chicago NorthWestern Railroad. The purchase and sale contracts exchanged by both parties agreed as to the traded terms and conditions and are not disputed in this case.

On Tuesday, April 14, 1992, AGP applied the required 75-car CNW corn train Ex. Klemme, Iowa, to Dreyfus. Dreyfus accepted the train as tendered and instructed that it be billed to Archer Daniels Midland at Clinton, Iowa. Payment was to be effected upon presentation of seller's shipping documents in accordance with the NGFA's Grain Trade Rules. AGP presented documents for payment directly to Dreyfus on Thursday morning, April 16.

Upon receipt of the train documents, Dreyfus verbally requested that AGP verify the signature on the rail bill of lading; that is, that the signature was that of an authorized agent of the railroad in accordance with NGFA Grain Trade Rule 31.

Over the next couple of hours AGP and Dreyfus exchanged numerous phone calls, but were unable to resolve this issue to the other's satisfaction.

Dreyfus contended that payment was not due unless or until AGP confirmed that the bill of lading had been

signed by a properly authorized agent of the CNW Railroad. AGP countered that it had presented documents in accordance with its contractual obligations, and that payment was due upon presentation. Additional urgency was expressed by AGP since Thursday, April 15, 1992, was the last business day preceding the Good Friday three-day holiday weekend.

At about 1:30 p.m., AGP informed Dreyfus that if immediate payment was not guaranteed, AGP would pull the train and sell it elsewhere.

Failing to receive payment or a guarantee of payment, AGP pulled the train from Dreyfus at about 2 p.m. and resold it.

AGP considered Dreyfus to be in default because of non-payment, canceled its mutual contract at contract price (also the same price that train was resold) and claimed no damages.

Dreyfus contended that its questioning of the signature on the bill of lading was valid, required a clearer answer, and that AGP's withdrawal of the train was unwarranted. Dreyfus subsequently declared AGP in default for pulling the train and, four business days later, purchased a replacement.

Dreyfus claimed \$34,125 plus interest, in damages associated with its replacement purchase of the AGP train.

AGP made no counter claims in this dispute.

All parties agreed that NGFA Grain Trade Rules 29

and 31 are key to this dispute. Dreyfus centered its case on Trade Rule 29, Payment of Original Drafts and/or Invoices, which states in part: *"...it shall be understood that sight drafts or invoices are subject to payment on presentation to the Buyer or his designated agent, when properly documented and substantiated by bill of lading,..."*

AGP placed its defense upon its contention that documents were proper when presented, that this was conveyed to Dreyfus and Dreyfus' reluctance to pay was unfounded since it was protected by NGFA Grain Trade Rule 31(b), applicable to straight bills of lading, which states in part: *"Any loss resulting from irregular or incorrect bills of lading shall be paid by the Seller."*

### **The Decision**

In reaching a decision, the arbitrators focused on NGFA Grain Trade Rule 31(b), which protects a buyer against any potential irregularities in rail bills of lading.

The arbitration committee gave full consideration to each party's claims as contained in the information provided, and drew the following conclusions based upon the parties' contract, applicability of the NGFA Trade Rules and trade practice.

The arbitrators found Dreyfus' questioning of the signature on AGP's bill of lading to be unnecessary and its refusal to effect payment upon presentation of documents inappropriate in this case.

The AGP train was billed two days prior to AGP's

presentation of documents to Dreyfus. The train's billing was clearly accepted by the CNW Railroad and the unit was en route to its billed destination.

There was no evidence of any problem with the train, and no reason to believe that it would not be delivered as billed. The arbitrators believed that the protection afforded by NGFA Grain Trade Rule 31, and the acceptance of billing by the CNW Railroad, invalidated Dreyfus' concerns with the bill of lading and removed Dreyfus' reasoning for non-payment.

Therefore, the arbitrators rejected Dreyfus' claim and found in favor of AGP.

### **The Award**

In that Dreyfus' claim for damages was denied and AGP made no counter claim, no monetary award was granted.

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

**Jay O'Neil, Chairman**  
Bartlett and Co.  
Kansas City, Mo.

**Terry Schlotfeldt**  
Countrymark Co-op, Inc.  
Indianapolis, Ind.

**William Winnie**  
Continental Grain Co.  
Kansas City, Mo.