



Arbitration Decision

National Grain and Feed Association

September 26, 1996

Arbitration Case Number 1745

Plaintiff: Farmland Industries Inc., Kansas City, Mo.

Defendants: Pickrell Co-op Association, Pickrell, Neb.,
and Farmers Commodities Corp., Des Moines, Iowa

Statement of the Case

This case involved a contract originally entered into between defendant-seller, Pickrell Co-op Association (Pickrell), and Grain Merchandising & Management Inc. (GMMI).

[Note: Farmland Industries Inc. (Farmland) explained that GMMI was a 50/50 joint venture between Farmland and Farmers Commodities Corporation (FCC). As part of the dissolution of GMMI, Farmland said it became the assignee of all GMMI's rights and obligations in the contract between Pickrell and GMMI. FCC also served as the broker between Pickrell and GMMI.]

The contract at issue¹ was entered into on Jan. 20, 1993 and involved the sale by Pickrell of 100,000 bushels of U.S. No. 1 yellow soybeans at -.23 SX to GMMI, with delivery to Ag Processing Inc., Lincoln, Neb. The trade was confirmed by FCC through the broker's issuance of FCC Confirmation No. 43102. The record showed that the defendant-seller, Pickrell, failed to mail any confirmation of the transaction.

On the afternoon of Jan. 20, a representative of the broker, FCC, and the buyer, GMMI, priced the contract by spotting the Chicago Board of Trade (CBOT) futures price of \$5.98 SX. The record indicated that a representative of FCC also conferred with the seller, Pickrell, and that agreement was reached. The agreement was reflected in GMMI's Confirmation No. 696 dated Jan. 20, 1993, which indicated a flat-price of "\$5.75, delivered AGP @ Lincoln, Ne., Oct./Nov. 1993 shipment." GMMI's confirmation also contained a typed statement in remarks that it was "[p]riced board @ 5.98 sellers right to repurchased and del. in own name." Later, when Farmland purchased GMMI's assets as part of the dissolution

of GMMI, Farmland indicated it issued its own Contract No. P79848 to "replace the previous GMMI purchase contract."

Notwithstanding the prior documentation, the record also showed that Farmland erroneously believed that the assigned contract, then known as Farmland No. P79848, still was unpriced in mid-October 1993. Thus, when Pickrell delivered 30,000 bushels of soybeans on Oct. 15, 1993, Farmland priced the soybeans at \$5.9375 based upon telephone discussions between representatives of Farmland and Pickrell. Another 20,000 bushels was delivered on Oct. 18 and priced at \$5.855. Pickrell's obligation to deliver the remaining 50,000 bushels on the contract was cancelled by agreement of the parties on a basis cancellation of \$.03 (-26 SX to -.23 SX) on Oct. 18, 1993.

On Dec. 2, 1993, Farmland representatives concluded that errors in pricing had occurred pursuant to the contract. Farmland stated that its conclusions were based upon events related to the fulfillment of another contract, which led to Farmland's discovery of contractual documents then in the possession of FCC. Farmland contended that the basis cancellation, along with the other pricings on the contract made on Oct. 15 and 18, were contrary to Pickrell's contractual obligations based on the newly discovered documents.

The plaintiff, Farmland, sought \$53,850 in damages from both Pickrell and FCC, as broker and as a representative of Pickrell's, for the losses attributable to the pricing mistake on the contract.

The Decision

The arbitration committee found that all parties involved in this transaction were deficient in their compliance with the

¹ The arbitration committee focused solely on FCC [Contract] Confirmation No. 43102/GMMI Buyer's Contract No. 696, which later became Farmland Contract No. P79848. Another contract issued into on the same day and described by Farmland as part of a spread transaction was addressed in prior related arbitration, Pickrell Co-op Association vs. Farmland Grain Division, NGFA Arbitration Case Number 1711 and NGFA Arbitration Appeals Decision Number 1711 (May 25, 1995).

NGFA Trade Rules². Pickrell failed to send any confirmations on this transaction. Therefore, the contractual documents issued by GMMI, FCC and Farmland, along with the affidavits and other testimony presented by the parties, served as the basis for this decision.

The arbitrators concluded that FCC had no liability to Farmland based on the facts of the case. The arbitrators concluded that GMMI and Pickrell did price the contract at \$5.75 per bushel on Jan. 20, 1993. Pursuant to NGFA Grain Trade Rule 6(c), Pickrell was bound to the terms of the pricing agreement based upon the GMMI confirmation. Pickrell was, therefore, obligated to perform the contract under its terms with Farmland, as assignee of the GMMI contract.

Based upon these findings, the arbitrators found in favor of Farmland Industries, Inc. on its claim against Pickrell Co-op Association.

The Award

Damages in this case were calculated as follows:

Oct. 15, 1993:	Difference between \$5.9375 and \$5.75 on 30,000 bushels:	\$5,625
Oct. 18, 1993:	Difference between \$5.855 and \$5.75 on 20,000 bushels:	\$2,100

Oct. 18, 1993:	Difference between cancellation pricing of \$5.925 and \$5.75 on 50,000-bushel balance of contract:	\$8,750
Oct. 18, 1993:	Reversal of basis cancellation of \$0.03 per bushel on 50,000-bushel balance of contract:	\$1,500
Total Damages Due Farmland From Pickrell:		\$17,975

In addition, Farmland was awarded interest on the award of \$17,975 at the rate of 6 percent per annum from Oct. 18, 1993 until paid.

Submitted with the unanimous consent and approval of the arbitration committee, whose names appear below:

Chris Frye, Chairman
President
Citizens Grain Co. Inc.
Chester, Neb.

Ms. Diane Hanekamp
Manager, Commodities
Operations
CERESTAR USA Inc.
Chicago, Ill.

Ms. Nancy Runge
Assistant Grain Merchandiser
Demeter Inc.
Fowler, Ind.

² The contract confirmations of both FCC and GMMI expressly provided that the transaction was governed by the rules of the National Grain and Feed Association.



Appeal Decision -- Arbitration Case Number 1745

Appellant: Farmland Industries Inc., Kansas City, Mo.

**Appellees: Pickrell Co-op Association, Pickrell, Neb.
and Farmers Commodities Corp., Des Moines, Iowa**

The Arbitration Appeals Committee individually and collectively reviewed all the evidence submitted in Arbitration Case Number 1745. It also reviewed the findings and conclusion of the original arbitration committee.

John L. McClenathan Jr., Chairman
Vice President, Grain Marketing
GROWMARK Inc.
Bloomington, Ill.

The Decision

The Arbitration Appeals Committee unanimously affirmed the decision of the original NGFA Arbitration Committee,³ which awarded damages to Farmland against Pickrell Co-op Association in the amount of \$17,975, plus interest.

Philip L. Hageman
Vice President
Parrish & Heimbecker Inc.
Brown City, Mich.

Thomas J. Hammond
Senior Vice President
Columbia Grain Inc.
Portland, Ore.

Robert W. Pegan
Executive Vice President
Central States Enterprises Inc.
Heathrow, Fla.

Wellington White
Purchasing Manger
Kruse Grain Division
of PM Ag
Ontario, Calif.

Submitted with the unanimous consent and approval of the Arbitration Appeals Committee, whose names are listed below:

³ NGFA Secretary's Note: The original committee found in favor of Farmland Industries Inc. on its claims against Pickrell, but awarded less damages than sought. Farmland's appeal related solely to the amount of damages which Pickrell was ordered to pay.