Arbitration Decision
National Grain and Feed Association

February 15, 1996

Arbitration Case Number 1748

Plaintiff: Jones and Coontz Co., Springville, Iowa

Defendant: Murphy Grain Marketing Inc., Overland Park, Kan.

Statement of the Case

On Oct. 19, 1994 the plaintiff, Jones and Coontz Co., purchased one railcar load of high protein, high fat soybean meal from the defendant, Murphy Grain Marketing Inc.

The defendant confirmed the sale in its contract #3376. The contract specified soybean meal with approximately 48 percent protein and 6 percent fat, with destination grades to govern and NGFA Trade Rules to apply. No purchase contract was provided by Jones and Coontz, although Murphy Grain's contract was signed and returned by Jones and Coontz. For purposes of this case, the arbitrators relied upon the seller's contract as both parties agreed to the original terms of the contract.

Records indicated that the railcar was placed for delivery on Oct. 27, 1995. Upon arrival, it was inspected visually and was found to be moldy because of leaking top hatches. The plaintiff's customer began to unload the car. But after unloading 5.6 tons, the unloading was stopped because the receiver was concerned about the presence of mold. It also said it noticed the color and smell of the product was not consistent with soybean meal.

The manufacturer of the soymeal was contacted, and informed the plaintiff that the meal should not be fed to swine (which was the intended use and the basis for the sale). At this time, the plaintiff requested that the defendant take the car back for the previously stated reasons. Murphy refused to accept the car, but agreed to work with Jones in dispensing of the product. Jones and Coontz acted in good faith to minimize losses and sold out the off-grade product. After disposition of the product, Murphy Grain Marketing Inc. disputed the authenticity of the grades and invoices, and denied all claims presented by Jones and Coontz Co. The dispute then was submitted to arbitration.

Jones and Coontz claimed costs of $3,799.18. Murphy Grain Marketing denied the claim and sought compensation for the $200 arbitration fee.

The Decision

In reaching a decision, the arbitrators relied upon NGFA Feed Trade Rule 30, "Default on Quality," which states, in part: *"It is the responsibility of both Seller and Buyer to verify that the feedstuff complies with...a specific quality description."*

Further, Feed Trade Rule 30.B.2. addresses the course of action taken by the plaintiff when it accepted the carload of meal after finding it to be of low quality. Concerning the defendant's questions with respect to the validity of the grades and shipments, the committee relied upon the information provided and assumed the invoices with grade certificates to be proof of shipment.

The documents submitted in this case documented that numerous samples of the meal were taken, but one sample was taken from the railcar in contention and was submitted on Oct. 28, 1995. The analysis of this sample found it to be 46.71 percent protein and 1.02 percent fat, clearly less than called for by the contract. Because the contract stated "destination grades" and not "destination official grades," the arbitrators found that the seller entrusted the buyer with the responsibility to obtain a representative sample. For this reason, the arbitrators determined that the inspection results on this sample should be the basis for settlement in lieu of any other sample on the load. The arbitrators recognized this

sampling procedure was not consistent with the trade rules nor with the "custom of the trade." But the arbitrators nonetheless believed the contract negated the need for destination official grades.

The arbitrators also considered the custom of the trade when calculating the discounts applied.

In conclusion, the arbitrators believed the facts presented showed that Jones and Coontz Co. received something other than what was represented by the verbal transaction and by the contract. Therefore, the arbitrators found that Jones and Coontz Co. should be compensated for the loss in product value caused by selling a distressed product, the value of the missing fat content and any additional freight and demurrage incurred in attempting to resell the product.

The Award

Murphy Grain Marketing Inc. was directed to pay Jones and Coontz Co. the sum of $3,799.18, less $36.56 for the miscalculated demurrage charges, for a total of $3,762.62. In addition, accrued interest was awarded from the date of the claim until final settlement. The counter claim of $200 by Murphy Grain Marketing Inc. was denied.

Respectfully submitted by the arbitration committee, whose names are listed below:

Mark Heckman, *Chairman*
Gringer Feed and Grain Inc.
Iowa City, Iowa

Russell E. Bragg
OK Industries Inc.
Ft. Smith, Ark.

Daniel Mack
Harvey Farmers Elevator
Harvey, N.D.

Appeal Decision -- Arbitration Case Number 1748

Appellant: Murphy Grain Marketing Inc., Overland Park, Kan.

Appellee: Jones and Coontz Co., Springville, Iowa

The Arbitration Appeals Committee individually and collectively reviewed all the evidence submitted in Arbitration Case Number 1748. It also reviewed the findings and conclusion of the original arbitration committee.

The Arbitration Appeals Committee generally agreed with the findings of the original arbitration committee, but differed on the amount of the award. The original arbitration committee awarded Jones and Coontz $3,762.62 attributed to the loss in value of the distressed product, demurrage and the value of the missing fat content.

The Arbitration Appeals Committee agreed with the inclusion of the award for demurrage but disagreed with including a monetary adjustment for the missing fat content. The Arbitration Appeals Committee found that Jones and Coontz was compensated for its total damages because of the difference between the purchase price and the sale price, plus freight and demurrage. Including an additional amount for the missing fat content would unjustly enrich Jones and Coontz.

Therefore, the Arbitration Appeals Committee awarded the appellee $2,156.26, plus interest from Dec. 20, 1994 at the rate of 8.75 percent until paid.

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

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

Tom Couch
Eastern Regional Manager, Grain
Farmland Industries Inc.
Kansas City, Mo.

Richard A. McWard
Vice President
Bunge Corp.
St. Louis, Mo.

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

Thomas Feldmann
Marketing Manager
West Central Cooperative
Ralston, Iowa