Arbitration Decision

National Grain and Feed Association

February 29, 1996

NGFA Arbitration Case Number 1754

Plaintiff: ADM/GROWMARK, Decatur, Ill.

Defendant: Commodities Specialists International, a Division of Demeter Inc., Stilwell, Kan.

Statement of the Case

On Oct. 13, 1994, ADM/GROWMARK purchased from Commodities Specialists International (CSI), one 50-car unit train (165,000 bushels) of U.S. No. 1 yellow soybeans at -23 SX, F.O.B. Delphi, Ind., to be shipped in buyer's equipment for last half October shipment. The trade was brokered by the Prentice Co. (Prentice), Charlotte, N.C.

None of the parties indicated that any communication occurred during the contract period concerning the placement of a train to fulfill the contract. On Nov. 1, 1994, ADM/GROWMARK placed a train at The Andersons' facility in Delphi, Ind. On Nov. 2, 1994, The Andersons priced an existing Andersons-ADM/GROWMARK contract and billed the train to ADM/GROWMARK for The Andersons' account. On Nov. 4, The Andersons learned that it was ADM/GROWMARK's intent to apply the train to CSI. However, CSI had not covered the sale and did not have a soybean position with The Andersons at Delphi. ADM/GROWMARK, CSI and Prentice all became aware of the problem on Friday, Nov. 4. But the mix-up apparently was not sorted out until Monday, Nov. 7.

On Nov. 7, 1994, CSI FAXed a letter to ADM/GROWMARK offering to cancel the contract at contract price. Later that same day, CSI sent another FAX indicating a willingness to cancel at "fair market value" and suggested using a broker to establish the price. On Nov. 8, ADM/GROWMARK FAXed a letter to CSI agreeing to cancel the contract at "fair market value" and proposed to establish the "fair market value" by obtaining a firm offer on a like quantity and origin. ADM/GROWMARK also suggested using Prentice as the broker. On Nov. 8, CSI indicated to Prentice that future firm offers would not depict the "fair market value" on Nov. 4 and asked Prentice to search for Central Indiana values on Nov. 4.

Over the course of the next several weeks, there were numerous conversations and written communications about relevant values. Some were disseminated through Prentice and others were sent directly between ADM/GROWMARK and CSI. Specifically:

- On Nov. 21, CSI suggested canceling at - 24 3/4 SF using the average of trades made from Oct. 25 to Nov. 4 as "fair market value."
- On Nov. 29, ADM/GROWMARK offered to cancel at - 0 SF using a Nov. 14 trade for delivery between Nov. 14 and Dec. 3 as a "fair market value."
- On Dec. 14, 1994, ADM/GROWMARK invoiced CSI for 34 1/4 cents per bushel on 165,000 bushels to cancel the contract based upon the Nov. 14 trade.
- On Feb. 7, 1995, CSI -- using the cancellation price of an underfill of a train unloaded on Oct. 22, 1994 as a "fair market value" -- sent a letter canceling the contract at - 20 SX and wired payment.
- On Feb. 10, 1995, ADM/GROWMARK returned CSI's payment and rejected its settlement proposal.

ADM/GROWMARK argued that it had acted as soon as possible to book the cheapest available offer for a comparable commodity so as to demonstrate fair market value. The firm said it determined this value by purchasing a train of soybeans on Nov. 14 from Kokomo Grain Co., Kokomo, Ind., at - 3 SF F.O.B. Kokomo. Kokomo carried a 5-cent per bushel freight advantage verses Delphi, Ind.; however, ADM/GROWMARK said it was willing to cancel at a value of - 0 SF. Given a November/January spread of 11 1/4 on Nov. 7, ADM/GROWMARK said it computed the fair market value to be

+ 11 1/4 SX and sought a settlement that reflected the difference between the contract price of - 23 SX and the Kokomo trade of + 11 1/4 SX -- equivalent to 34 1/4 cents per bushel on 165,000 bushels, for a total of $56,512.50.

CSI argued that it was ADM/GROWMARK that was in default and neither Trade Rule nor trade custom allowed the defaulting party to dictate terms of settlement of a defaulted contract *(in this case, ADM/GROWMARK's use of a subsequent firm offer to determine fair market value).* CSI further argued that any trade with a delivery period that extended beyond harvest would be inappropriate to use in determining fair market value. CSI provided the following information concerning other trades resulting from its attempts to establish a fair market value:

Date	FOB Point	Quantity	Shipment	Basis	Delphi Equivalent
10/21	Delphi (NS)	50 Cars	Nov. 5-20	-23 SX	-23 SX
10/25	Delphi (NS)	50 Cars	by Nov. 10	-16 SX	-16 SX
10/25	Columbus (NS)	22 Cars	Spot	-15 SX	-22 SX *
10/26	LaPaz (CSX)	65 Cars	F/H Nov.	-26 SF	-14 SX **
11/1	Redkey (NS)	50 Cars	by Nov. 15	-19 SF	-4 SX ***

* Adjusted for 7-cent freight differential.
** Adjusted for 11 3/4-cent SX/SF spread on 11/4/94.
*** Adjusted for 3 1/2-cent freight differential and 11 3/4-cent SX/SF spread.

CSI argued that the Oct. 25, 1994 spot trade was the most comparable trade. It requested that ADM/GROWMARK's claim be denied in its entirety, and that the contract be canceled at contract price per its original Nov. 4 offer.

The Decision

The arbitration committee concurred that NGFA Grain Trade Rule 10 -- "Incomplete Shipment or Delivery - Buyers Conveyance," was the Trade Rule applicable to this dispute.

ADM/GROWMARK failed to supply conveyance within the contract period. Therefore, it was CSI's duty, after giving notice to complete the contract, to elect to extend, sell-out or cancel at fair market value the unshipped balance of the contract.

As a result of less-than-complete and timely communication between the parties, the fact that ADM/GROWMARK was out-of-contract was unknown to CSI until Nov. 4. CSI failed to give written notice to ADM/GROWMARK to complete the contract. But on Nov. 7, CSI did propose, in writing, to cancel at fair market value. On Nov. 8, ADM agreed.

Given this sequence of events, it is the arbitrators' opinion that by failing to provide written notice any sooner, CSI extended the contract until Nov. 7. Thus, the determination of fair market value should be based on values in effect on Nov. 7, 1994.

The NGFA Trade Rules do not define specifically how fair market value is to be determined. However, ADM/GROWMARK's solution of "booking the cheapest available offer as soon as possible" is more like "buying-in" the contract than canceling at "fair market value." At the end of harvest, values can improve very rapidly and dramatically. Timeliness is of great importance.

The parties offered a total of six trades to support their respective arguments as to the appropriate fair market value. ADM/GROWMARK offered one and CSI offered five. While none of the trades was a perfect reflection of fair market value on Nov. 7, no other evidence was supplied to the arbitration committee.

Therefore, the committee concluded that the Nov. 1 trade of 50 cars out of Redkey, Ind., for delivery by Nov. 15 best reflected the fair market value on Nov. 7, 1994. The earlier trades presented by CSI occurred before the contract was in default. Further, the ADM/GROWMARK Nov. 14 trade was several days later during a period of rapid basis appreciation.

The arbitrators computed the fair market value as follows:

- Nov. 1 F.O.B. Redkey, Ind.: - 19 SF
- Freight differential/Delphi: + 3 1/2
- Nov/Jan on Nov. 7: + 11 1/4
- F.O.B. Delphi versus SX: - 4 1/4

Award

The arbitration committee awarded the plaintiff, ADM/GROWMARK, the difference between the contract price of - 23 SX and the fair market value at cancellation of - 4 1/4 SX. CSI was directed to pay ADM/GROWMARK 18 3/4 cents per bushel on the contract quantity of 165,000 bushels. The total award was $30,937.50. No interest was awarded.

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

Donald Ludwig, *Chairman*
Manager
Elkhart Grain Co.
Elkhart, Ill.

Bob Mortenson
Director of Transportation
Farmers Commodities Corp.
Eden Prairie, Minn.

John Case
President
Atwood-Kellogg Co.
Minneapolis, Minn.