

Arbitration Case Number 1521

Plaintiff: Northern Colorado Grain Company, Greeley, Colorado

Defendant: Commodity Traders Inc., Omaha, Nebraska

November 18, 1975

Statement of the Case

On November 7, 1973, Northern Colorado Grain Company bought from Commodity Traders Inc. 14, 90-ton hopper cars of No. 2 Yellow Corn at \$4.50 per hundredweight delivered Greeley, Colorado, with shipment to be made two cars per week beginning the week of November 12, 1973, through the week of December 24, 1973. Evidence showed that of the 2,520,000 pounds of corn contracted, only 1,670,760 pounds were delivered, leaving a balance of 849,240 pounds. Failure to complete the shipments was explained by the Defendant by inadvertent removal of the contract from his active files. There was no notification by the Defendant of its inability to complete the contract, and the Plaintiff did not exercise due diligence in determining whether the Defendant had defaulted. The Plaintiff did send an invoice on June 13, 1974, showing its calculation of market difference between contract and price and market value as of December 24, 1973, but that was not proper procedure as required by Grain Trade Rule 10 of the National Grain and Feed Association. During the second of two phone calls on July 25, 1974, the Plaintiff agreed to an extension of contract "to include harvest period 1974." The committee interpreted that period to terminate on December 31, 1974. The balance of corn due still was not shipped.

The Plaintiff next contacted the Defendant on January 9, 1975 and confirmed that the corn had still not been shipped, but did not exercise the options available to him under Grain Trade Rule 10. On January 29, 1975, the Plaintiff notified the Defendant through the Plaintiff's attorney that the contract, as extended, was in default and requested payment

of damages amounting to \$11,889.36 as of December 31, 1974. This notification was received by the Defendant on February 3, 1975.

The Decision

By unanimous agreement, the arbitration committee found for the Plaintiff but awarded less damages than claimed.

The committee ruled that the first formal notification of failure to complete contract was received on February 3, 1974. According to Grain Trade Rule 10, the Defendant had the next business day in which to complete the contract. Since it failed to do so, the Plaintiff was entitled to cancel the remaining unshipped balance at the "fair market value." The Defendant, on February 5, 1975, offered to settle at his estimate of the market on February 3, but the Plaintiff declined. Lacking any documentation of cash values, the committee awarded damages amounting to \$7,643.16, which was computed by taking the Plaintiff's claim of \$11,889.36, based upon its United States Department of Agriculture-based estimate of the market on December 31, 1974, and reducing it by the amount of the decline in the Chicago March corn option from the close of December 31, 1974 to the close February 4, 1975, a total of 28 cents per bushel or 50 cents per hundredweight.

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

G. F. Marshall, Chairman
Lansing Grain Company, Lansing, Michigan

Lowell DeLong
Agway Inc., Syracuse, New York

Vernon Walters
Grain Processing Corporation, Muscatine, Iowa