



Arbitration Decisions

July 30, 1982

ARBITRATION CASE NUMBER 1566

PLAINTIFF: Cargill, Inc.

DEFENDANT: Louis Dreyfus Corporation

FACTS

In January and February, 1980, Plaintiff sold Defendant through various brokers five contracts of corn totaling 3,410,000 bushels. Those contracts were as follows:

350,000 bushels	Last Half April, 1980
680,000 bushels	Split April, 1980
680,000 bushels	Split May, 1980
340,000 bushels	Split May, 1980
1,360,000 bushels	Split June/July, 1980

The corn involved in those transactions was to be routed CNW, RI and MILWAUKEE RRs in units of 25 or 50 cars. All the brokers involved confirmed basis of the contracts to be 'delivered gulf export', 'gulf export' and in one case, 'including Pascagoula'.

Confirmation of the parties involved confirmed the transactions as 'delivered gulf', 'delivered gulf/Pascagoula'.

FACTS

Shipping instructions on the broker's confirmations were either 'directions later', 'rail, call for billing' or in one case BLANK.

Plaintiff's confirmation read 'call for instructions' or 'you to advise'.

Defendant's confirmation was not so structured as to speak to the specific item 'shipping instruction'. Under the general heading of 'remarks', those confirmations carried the typed words 'CNW/MILW./RI - 25-50 car train to apply'.

Disagreement between the two parties arose when defendant furnished shipping instructions on the first contract noted herein. Defendant furnished the destination of Chicago, Illinois 'protect 50 car export train rate'. Plaintiff refused to accept those billing instructions as in their opinion it 'did not satisfy the terms of the contract', i.e. 'delivered gulf/Pascagoula'. Defendant's position was as stated in paragraph 6 of their written confirmation to Plaintiff.

The pertinent part of that paragraph was -

"The designation of delivery point in this confirmation is made for the purposes of establishing price basis only, and buyer reserves the right to bill cars to any destination, with additional costs of transportation to be for buyer's account."

Plaintiff declared part of the contract in default and sold out the grain in dispute.

In like manner, the balance of that same contract was tendered by plaintiff to defendant. Defendant designated delivery as Kansas City. Plaintiff again refused to accept that destination for the same reason as stated previously. Plaintiff declared Defendant to be in default and again sold out the grain in question.

Defendant, around the end of April, bought in the same 350,000 bushels of corn as he stated Plaintiff to be in default.

This action by Plaintiff regarding this contract (350,000 bushels of corn) resulted in Plaintiff's demand in arbitration for \$8,750.00.

Defendant had not made any claim to this committee regarding the purchase of these same bushels.

Regarding the balance of the contracts involved in this dispute, Plaintiff began the practice of accepting Defendant's non-gulf destination but with the caveat that they were doing so 'under protest' so as to mitigate damages. That same caveat stated that they were preserving their rights to proceed against the Defendant for damages incurred.

FACTS

Specifically the damages requested relate to the private car mileage allowance lost to Plaintiff due to Defendant's 'diversion of trains applied to ---- non-gulf destinations'. That figure computed in detail by Plaintiff totaled \$55,076.31.

The committee accepted those figures. The committee noted that Defendant chose not to contest the calculations but rather to rely on the position - no breach ergo, no damages are due Plaintiff.

CONCLUSIONS

It was clear to the committee that there were two decisions to be made.

Those decisions are as follows:

Point A

Is Plaintiff's claim of \$8,750.00 viable when considering the evidence presented?

Point B

Is Plaintiff's transportation claim of \$55,076.31 valid when considering the evidence presented?

The committee submitted a majority-minority decision on point A and a unanimous decision on point B.

QUESTION - Point A

Is Plaintiff's claim of \$8,750.00 viable when considering the evidence presented?

MAJORITY OPINION

While both parties may have been focusing in their separate ways on other elements at issue, the simple fact was that Plaintiff did allow a default to actually occur. Defendant had a right to destinations not specified in the contract. There seems to be ample precedent in historical trade customs and practices to affirm that Defendant did have a right to alternate destinations from those originally specified. We, therefore, believed Defendant was within his rights to demand them, assuming that Defendant bears, in their own terms, 'transportation costs' to do so.

That being the case, the Arbitration Committee had no choice but to rule in favor of Defendant as the injured party on the default.

Plaintiff claim for remedy in the amount of \$8,750.00 denied.

/s/ Marshall Faith
The Scouler-Bishop Grain Co.
Omaha, Nebraska

/s/ Robert Cartmill
Lincoln Grain, Inc.
Lincoln, Nebraska

MINORITY OPINION

It was the writer's belief that the broker's confirmations were the governing documents in this case. See Grain Trade Rules of the National Grain & Feed Association Rule 40(d). Predicated upon this belief, I have put great weight on the written comments of the brokers involved as furnished by the Defendant in his response to the first argument of Plaintiff.

Specifically, looking at the letters from the brokers, I find that their letters designated as Exhibit 1, 2, and 3 in Defendants' documents are not in agreement, as Exhibit 1 speaks only of 'delivered gulf' and does not speak to the exact contract term of 'gulf export' or 'delivered gulf export'.

Exhibit 2 is clearer in that his opinion states there isn't any distinction between the two terms of 'delivered gulf' versus 'delivered gulf export'.

Exhibit 3 is clear regarding his opinion on the term 'delivered gulf export'. I quote, 'the contract did not guarantee the trains would be billed to a gulf destination'. However, this broker spent more time speaking of the confusion prevalent shortly after the embargo (the actual contracts were made during the period January 27th to February 5, 1980) and subsequent development that brought about a 'two tiered' market, (guaranteed gulf unload versus 'free runners').

The quandry faced by the writer is obvious. A 'two tiered' market should have developed pre-embargo if custom of the trade allowed trains of that type to be 'free runners'. The fact that it developed 'soon afterward' is a logical conclusion when we recall the dilemma many firms faced.

The term 'soon afterward' is not in my mind a sufficient time to develop a trade practice considering the dates of these contracts.

It is therefore my opinion that there is a distinction between 'delivered gulf' and 'delivered gulf export', the latter used by the brokers being specific and more confining (i.e. gulf export destination only acceptable against the contracts in question.)

I find for the Plaintiff on the question of default of contract and award the Plaintiff the sum specified \$8,750.00.

/s/ John P. Doherty
Growmark, Inc.
Chicago, Illinois

QUESTION - Point B

Was the Plaintiff's transportation claim of \$55,076.31 valid when considering the evidence presented?

The controversy clearly stemmed from the alteration of the contracts in question.

Plaintiff's transportation claim came from their decision, under protest, to accommodate Defendant's alternative destinations.

We attach considerable significance to Rule 41 and its mandate for mutual agreement to alter a contract.

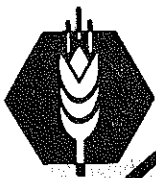
What was Plaintiff's true 'transportation cost' to effect the moves chosen by Defendant? 'Transportation cost' can, should and often does include mileage compensation or its absence, consecutive trip obligations, annual volume requirements, or other factors. It would not be proper to allow a buyer absolute freedom to order destinations at variance with those contractually agreed upon and also allow him unilateral choice of tariff line items in the rate structure which may or may not include all of the factors significant to or binding on a shipper.

As Plaintiff has adequately demonstrated transportation costs to effect the alternative moves chosen by Defendant at variance with those costs unilaterally selected by Defendant, we rule in favor of Plaintiff in the amount of \$55,076.31.

/s/John P. Doherty, Chairman
Growmark, Inc./Grain Div.
Chicago, Illinois

/s/Robert Cartmill
Lincoln Grain, Inc.
Lincoln, Nebraska

/s/Marshall Faith
The Scouler-Bishop Co.
Omaha, Nebraska



NATIONAL GRAIN AND FEED ASSOCIATION

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DECISION OF ARBITRATION APPEALS COMMITTEE

ARBITRATION CASE NUMBER 1566

The Arbitration Appeals Committee individually and collectively studied all evidence that was presented to the original Arbitration Committee and found as follows:

POINT "A"-ORIGINAL DECISION: Appellant: Cargill, Inc.
Appellee: Louis Dreyfus Corp.

The Appeals Committee unanimously agreed that the decision of the original committee (majority opinion) that the Appellee (Louis Dreyfus Corporation) had a right to destinations not specified in the contract. The terms "Delivered Gulf/Gulf Export" were price-basing points, and the buyer had the right to bill cars to other destinations. The Appellant (Cargill, Inc.) claim for remedy in the amount of \$8,750.00 was denied.

POINT "B"-ORIGINAL DECISION: Appellant: Louis Dreyfus Corp.
Appellee: Cargill, Inc.

The Appeals Committee unanimously agreed that the settlement made by the original committee to allow the Appellee (Cargill, Inc.) \$55,076.31 for transportation charges be overruled and that no monies were due the Appellee on Point "B" for the following reasons:

1. Since the Appeals Committee agreed in Point "A" that "Basis Gulf" or "Basis Gulf Export" is a pricing mechanism, and no directions were included in contract (evidenced by "Directions later", "You to advise") the original Arbitration Committee's reference to Rule 41 was in error. The original contract was not altered or amended.
2. The Appeals Committee also believed that as long as the Buyer protected the freight rate to the Gulf, he had no other obligation for charges such as leased-car mileage allowance, since he did not buy "Guaranteed Gulf Unload". The Seller controls the type of equipment applied on contract, therefore it is a risk the Seller takes.

/s/James Donnelly, Chairman
R.F. Cunningham Co.
Melville, New York

/s/Charles H. Holmquist
Holmquist Elevator Co.
Omaha, Nebraska

/s/W.C. Theis
Simonds-Shields-Theis Grain Co.
Kansas City, Missouri

/s/Royce S. Ramsland
Quaker Oats Co.
Chicago, Illinois

/s/Rupert Quinn
Benson Quinn Co.
Minneapolis, Minnesota