



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

December 30, 1982

## Arbitration Case Number 1583

Plaintiff: Fred Webb Inc., Greenville, North Carolina

Defendant: General Mills Inc., Minneapolis, Minnesota

### Statement of the Case

In October 1981, the Plaintiff, Fred Webb Inc., sold the Defendant, General Mills Inc., 40,000 bushels of No. 2 Soft Red Winter Wheat for shipment to General Mills Inc., Johnson City, Tennessee, during the weeks of October 26, 1981 and November 2, 1981. Both the broker, Cameron Brokerage Company, and the Defendant confirmed the trades as "milling quality wheat." The Plaintiff signed the Defendant's confirmation. The Plaintiff's confirmation only called for No. 2 Wheat. The Plaintiff, Webb, shipped three cars on October 29, 1981, which the Defendant, General Mills, rejected on arrival at Johnson City because of excessive insect-damaged kernels. Tests performed by the Tennessee Department of Agriculture substantiated insect damage in excess of the Food and Drug Administration's action level of 32 kernels per 100 grams. Webb diverted the three cars and offered to fulfill the contract with wheat containing less than 32 insect-damaged kernels per 100 grams on origin grades. General Mills advised that it would not accept wheat containing more than six insect-damaged kernels per 100 grams, as that was the company's quality control maximum and the reason it purchased wheat of "milling quality." Webb did not fill the contracts, and claimed General Mills owed it the difference on the basis of the cancellation, the wheat having been sold at Dec. -11 cents and bought in at Dec. +26 cents -- a 37 cent spread, or \$14,800 on the 40,000 bushels.

General Mills Inc. basically agreed with the sequence of events as presented by Fred Webb Inc., but counter claimed that Webb owed General Mills the flat price difference between the original purchase at \$4.20 7/8 average and the buy in at \$4.40, or 19 1/8 cents on 40,000 bushels, equaling \$7,650. General Mills provided sufficient evidence regarding trade practice interpretation of the term "milling quality."

### The Decision

The arbitration committee unanimously found in favor of General Mills Inc., and that Fred Webb Inc. owed the Defendant \$7,650 plus interest from the date of settlement, December 10, 1981. The Plaintiff, Webb, should not have signed the General Mills acceptance cards without having a clear understanding of the buyer's

contract term "milling quality." It is customary practice for mills to set standards in buying wheat with commercially more stringent requirements than those determined to be actionable by the FDA, and that "milling quality" connotes ipso facto something other than No. 2 Soft Red Winter Wheat.

Edmund P. Karam, Chairman  
Continental Grain Company  
New York, New York

Charles Miller  
Peavey Company  
Commerce City, Colorado

Theodore Metz  
Bunge Corporation  
Minneapolis, Minnesota

Arbitration Case Number 1583

Decision of the Arbitration Appeals Committee

Appellant: Fred Webb Inc., Greenville, North Carolina

Appellee: General Mills Inc., Minneapolis, Minnesota

Each of the five members of the Arbitration Appeals Committee reviewed the evidence submitted in Arbitration Case Number 1583 and unanimously affirmed the decision of the original arbitration committee for the reasons declared in that decision.

Clayton W. Johnson, Acting Chairman  
Midstates Terminals Inc.  
Toledo, Ohio

Royce S. Ramsland  
The Quaker Oats Company  
Chicago, Illinois

Charles H. Holmquist  
Holmquist Elevator Company  
Omaha, Nebraska

W.C. Theis  
Simonds-Shields-Theis Grain Company  
Kansas City, Missouri

Rupert G. Quinn  
Benson-Quinn Company  
Minneapolis, Minnesota