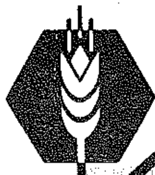
NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

April 21, 1983

Arbitration Case Number 1588

Plaintiff: Great River Grain Corporation, St. Joseph, Louisiana

Defendant: Farmers Export Company, Kansas City, Missouri

Statement of the Case

On Sept. 21, 1981, the Plaintiff loaded barge ACBL-2725 at St. Joseph, La., with 46,916.68 bushels of soybeans. The Plaintiff presented a copy of its own weight certificate and made available the weight tape which corresponded to the number of bushels loaded. The barge was sold to and unloaded by the Defendant at Ama, La., on Oct. 2, 1981. The unloading weight -- 45,854.66 bushels -- was 1,062 bushels less than the origin weight. The respective contracts accepted by both parties called for destination official weights to govern. The contracts also stated that National Grain and Feed Association Trade Rules would govern the contract.

The Plaintiff sought damages of $6,409.35 based upon the discrepancy in the weight multiplied by the value of the soybeans C.I.F. Nola, less one-quarter of 1 percent shrink allowance, a method the Plaintiff referred to as the custom of the trade in such matters. The claim is based upon the fact that the Defendant, by its own admission, violated Barge Trade Rule 2(f) by not notifying the shipper of the unloading weight within two business days of the actual unload by telephone or telex. The Plaintiff referred to a statement by an employee of the Defendant that a barge either immediately before or immediately following ACBL-2725 unloaded with a large gain compared to its origin-billed weights. The Plaintiff also presented copies of correspondence and wires that indicated a communication problem with the Defendant in the investigation of the weight.

The Defendant admitted it did not advise the shipper within the two-day period of the unloading weight, but referred to the fact that the weight certificate was in the shipper's hands within five days after the date of unload. Further, it said final settlement was mailed six days after the date the barge was unloaded. The Defendant stated that had the shipper received the two-day notice, it would not have received final settlement any sooner nor would it have changed the results on the barge weight tape. The Defendant pointed to the terms of the contract calling for official destination weights to govern. The Defendent said its weights were 100 percent FGIS supervised. It also stated that a re-check of the barge weight tape discovered no discrepancies. Referring to the statement that a barge with a large gain in weight was unloaded either immediately before or after the one in question, the Defendant stated that it is not uncommon to have wide variations because of the different methods of arriving at barge weights by interior shippers. The Defendant also denied that the Plaintiff's method of arriving at the damage claim is a custom of the trade.

Prelude to Decision

While the arbitration committee was unanimous in its thinking on the general principles involved in this case, it was unable to agree unanimously concerning the penalties to levy. Consequently, there is a majority decision and a minority decision.

Majority Decision

The majority decision found in favor of the Plaintiff and awarded damages in the amount of $3,204.67, a sum equal to 50 percent of the Plaintiff's claim. The Defendant was instructed to pay the Plaintiff $3,204.67. The basis for the decision is as follows:

The overriding issue was the violation of Barge Trade Rule 2(f). Regardless of how prompt the Defendant's settlements were, the shipper in this case was not aware of a large weight discrepancy for a five-day period. However slim the chance of proving the loss might have been, the intent of the rule is to provide that opportunity.

The majority decision cited two reasons for awarding only half the Plaintiff's claim. First, it was not necessarily the custom of the trade to revert to origin weight less one-quarter of 1 percent shrink in cases such as this. It is a trade practice to do so only when for some reason a clean weight certificate at destination is unobtainable. Secondly, it is recognized there is insufficient evidence to establish fault for the weight discrepancy at either the loading or unloading points. Consequently, the majority decision assessed the penalty against the Defendant for violation of the rule. To do otherwise would be to admit that Barge Trade Rule 2(f) cannot be enforced.

The majority decision also took issue with the Defendant's statement that operators of export terminals that make prompt settlements to barge shippers should not be penalized in any manner. Considerable time, effort and expense on the part of Trade Rules Committee members go into writing rules for the benefit of the entire industry. It is hardly in keeping with the principles of the Arbitration System when a member firm for whatever reason believes it should be exempt from compliance.

Morris W. Champion, Chairman
The Early & Daniel Company Inc., Indianapolis, Indiana

John Twomey
Twomey Company, Smithshire, Illinois

Minority Decision

It is the understanding of this arbitrator that the purpose of Barge Trade Rule 2(f) is to assure expeditious settlements of contracts and to provide shippers the opportunity to investigate weight discrepancies in a timely fashion. In this case, the time of notification occurred one day beyond the time stipulated in the rule. While the Defendant's performance violated the letter of the rule, it did not violate the intent, and may not be construed as malicious.

On the other hand, the award claimed by the Plaintiff was for settlement to be based upon its own affidavit weight at origin less one-quarter of 1 percent, which he asserted was a custom of the trade. It has been the experience of this arbitrator that such a settlement mechanism is used only when no other weight is available. In this case, not only is a clean official weight available, but there also is nothing in the rule that contemplates alteration of contract terms with regard to weight in the event the rule is violated.

The weight of the barge in question was determined according to the agreed terms of the contract -- "Destination Official." The certificate provided was clean, and no other evidence was presented of tampering with the barge or of grain left in the barge. There was no mention of an attempt to survey the barge itself.

The Plaintiff's claim was based solely upon the Defendant's breach of the Barge Trade Rule, and not upon any evidence of loss as a result of that breach. Therefore, any award to the Plaintiff would be punitive in nature and arbitrary in amount.

I find in favor of the Plaintiff, but can find no evidence of damages.

David C. Hanold
Peavey Company, Alton, Illinois

Arbitration Case Number 1588

Appeal Decision of Arbitration Appeals Committee

Appellant: Farmers Export Company, Kansas City, Missouri

Appellee: Great River Grain Corporation, St. Joseph, Lousiana

The Arbitration Appeals Committee individually reviewed all written evidence submitted in arbitration case number 1588 and reviewed the findings and conclusions of the original arbitration committee. The Arbitration Appeals Committee unanimously agreed with the majority decision of the original committee, and awarded the appellee, Great River Grain Corporation, $3,204.67 for the same reasons as cited in the majority decision by the original committee.

James Donnelly, Chairman
R.F. Cunningham & Company Inc., Melville, New York

Charles Holmquist
Holmquist Elevator Company, Omaha, Nebraska

Clayton Johnson
Mid-States Terminals, Toledo, Ohio

Royce Ramsland
Quaker Oats Company, Chicago, Illinois

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