NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

April 7, 1983

Arbitration Case Number 1595

Plaintiff: A.E. Staley Manufacturing Company, Decatur, Illinois

Defendant: Townsend Farms Inc., Millsboro, Delaware

Statement of the Case

This case involved a contract dispute concerning the sale of "60 percent gluten meal" from the Plaintiff to the Defendant for calendar year 1982. The Plaintiff, A.E. Staley Manufacturing Company, alleged a valid contract existed for 156 truckloads (approximately 20 tons each) of 60 percent corn gluten meal sold to the Defendant, Townsend Farms Inc., for shipment of approximately three truckloads per week during calendar 1982 at a "PDS" price based upon freight rates in effect on the date of shipment. The Defendant contended that a valid contract never existed, and that trades consummated during January-March 1982 were on a "continuing trade basis," such as had existed prior to January 1, 1982.

The Plaintiff claimed damages of $14,640 (based upon 122 truck deliveries, 20 tons each, not accepted by the Defendant at a penalty sales price to the Plaintiff of $6 per ton). In addition, the Plaintiff requested that the Defendant be required to take delivery of the 122 trucks not delivered from April 1, 1982 through December 31, 1982.

The Decision

The arbitration committee found that:

1. The Plaintiff, in fact, had a contract with the Defendant and properly issued a confirmation of such agreement to the Defendant. The Defendant failed to take the proper remedial action to prevent the contractual agreement submitted by the Plaintiff from becoming a bona fide contract. The National Grain and Feed Association's Trade Rules are clear concerning confirmations, as outlined in Feed Trade Rule 2A. Both parties agreed to arbitrate under the National's Trade Rules. Therefore, the rules in existence at the time were the only guidelines to be used in arbitrating the dispute (Feed Trade Rules 2A & 2C).

2. The Defendant breached the contractual agreement, beginning in early April 1982, by refusing to accept further deliveries from the Plaintiff.

3. The Plaintiff properly advised the Defendant in writing by letter on April 26, 1982 that the Defendant was in breach of contract and that damages would be expected on the sell-out of the balance undelivered on the contract. The Defendant showed no evidence of responding to the notification.

4. The Plaintiff suffered damages by having to sell the undelivered portions of the contract into marketing territories which returned substantially less monies F.O.B. the point of production than would have been the case had the shipments been delivered to the Defendant's plant in Millsboro, Delaware.

   The Plaintiff did not, however, adequately document its claimed losses to the satisfaction of the arbitration committee. The arbitration committee found that damages should be awarded on undelivered portions at only $3 per ton, predicated upon the competitive Pennsylvania trucking cost market.

There was a discrepancy between the number of deliveries claimed by the Plaintiff -- 34 delivered (156 contracted minus 122 adjustment claimed) versus the 35 invoices submitted by the Plaintiff. The Defendant submitted invoices covering 42 truckloads of 60 percent corn gluten meal delivered by the Plaintiff during the period January 1, 1982 through March 31, 1982.

The arbitration committee found that all loads delivered by the Plaintiff to the Defendant during the period January 1 through March 31, 1982 should apply to the contract, and that all adjustments should be calculated based upon the original contract understanding of 156 units multiplied by approximately 20 tons per unit, or a total of 3,120 tons. Although not specifically addressed in the Trade Rules, Feed Trade Rule 3 stipulates that specific ton quantities are to be defined when units are sold, unless there is a mutual agreement to the contrary. The Trade Rule applies to carloads, but also could be referenced to truckloads.

In reaching the above conclusions, the arbitration committee carefully considered the arguments of both the Plaintiff and the Defendant.

-- The issue concerning xanthophyll level was not an issue because there were no guarantees on the xanthophyll level in the trading of 60 percent corn gluten meal.

-- The Defendant's own testimony acknowledged the receipt of a sales confirmation from the Plaintiff. Verbal discussions that may or may not have occurred could not be confirmed nor taken into evidence by the arbitration committee.

The Award

Based upon the preceding findings, the arbitration committee awards the following damages to the Plaintiff:

Original contractual agreement (156 units at 20 tons each)	=	3,120 tons
Actual deliveries January 1, 1982- March 31, 1982 of 42 truckloads	=	- 856.75 tons
Tons undelivered on contract	=	2,263.25 tons
Damages: 2,263.25 tons at $3 each	=	$ 6,789.75

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

Jerry L. Bumgardner, Chairman
Ralston Purina Company, St. Louis, Missouri

Thomas L. Manuel
Con Agra Inc., Omaha, Nebraska

James R. Ryan
International Multifoods Corporation, Minneapolis, Minnesota