



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

April 14, 1983

Arbitration Case Number 1596

Plaintiff: Monarch Feed Mills Inc., Pocahontas, Arkansas

Defendant: Donald McEntire, Walnut Ridge, Arkansas

Statement of the Case

A contract was entered into on May 5, 1980 by Monarch Feed Mills Inc., and Donald McEntire under which 200,000 pounds of U.S. No. 2 yellow grain sorghum was sold by Mr. McEntire to Monarch Feed Mills Inc. for delivery during September or October 1980, at a price of \$4.05 per hundred pounds.

The Plaintiff's contract was signed by both parties. The Defendant did not issue a contract. The Defendant did not deliver the grain sorghum because of crop failure.

While it does not so state in any of the arguments, it must be presumed that the buyer extended the delivery period to Dec. 30, 1980.

On Dec. 23, 1980, Monarch Feed Mills Inc. wrote a letter to Donald McEntire stating if the delivery was not made on or before Dec. 30, 1980, he would be billed for the difference between the contract price and the then-current market price. Delivery was not made and Monarch Feed Mills Inc. invoiced Donald McEntire for \$2,900 on Dec. 30, 1980. The current price listed was \$5.50 per hundredweight. Subtracting the contract price of \$4.05 per hundredweight resulted in a difference of \$1.45 per hundredweight, which -- multiplied by the contract amount of 200,000 pounds -- equaled the \$2,900 charge.

Donald McEntire refused to pay the charge for two reasons: 1) he said he did not produce a crop; and 2) a clause in the contract relieved Monarch Feed Mills Inc. from purchasing the grain under certain conditions beyond its control, therefore Donald McEntire believed this clause should apply to the seller as well.

The Decision

Failure to produce a crop does not void a contract for grain delivery, since that grain is available somewhere. It is not impossible to make delivery. Difficult, perhaps; costly, probably; but not impossible. In practice the contract is "bought back" instead.

While one clause in the contract seemed to favor the buyer under certain circumstances, the clause was there when the Defendant signed the contract and he accepted the conditions at that time.

The arbitration committee awarded Monarch Feed Mills Inc. \$2,900, plus interest at 15.0 percent, from Dec. 30, 1980 until the date paid.

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

Thomas Feldmann, Chairman
West Central Cooperative, Ralston, Iowa

Kenneth Allen
Perryton Equity Exchange, Perryton, Texas

Donald Mahl
Benson-Quinn Company, Minneapolis, Minnesota