



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

September 11, 1986

ARBITRATION CASE NUMBER 1633

Plaintiff: Agri-Products Inc., subsidiary of Fred Webb Inc., Greenville, N.C.
Defendant: Owens Farm Supply, Rochelle, Ga.

Statement of the Case

On March 6, 1985, Wakelon Agri-Products Inc. purchased 33,852.86 bushels of wheat from the Commodity Credit Corporation, in-store at Owens Farm Supply, Rebecca, Ga. On March 22, 1985, the plaintiff, Agri-Products Inc., paid the defendant the posted loadout charge of 10 cents per bushel and ordered the defendant to load out the wheat in covered hopper cars. The defendant shipped nine cars of wheat between March 30, 1985 and April 12, 1985 to Union City, Ga., for the plaintiff's account. The last of the nine cars was unloaded April 17, 1985, at which time a shortage of 5,074.19 bushels of wheat was discovered. Both parties acknowledged the shortage, as did the Georgia State Warehouse Division.

The dispute in this case involved the method of pricing the undershipment. On May 2, 1985, the plaintiff purchased the wheat to fulfill its contract obligation, which called for shipment by May 15, 1985. The purchase price was \$3.55 per bushel delivered Union City, Ga. The cost of 5,074.19 bushels less appropriate freight was \$16,833.62. The defendant offered to settle the shortage for a total price of \$14,714.60 and sent these funds to Agri-Products Inc. The plaintiff asks for the difference of \$2,119.02, plus interest.

The Decision

The arbitration panel unanimously found in favor of the plaintiff. The shortage was discovered on April 17, 1985 and was acknowledged by all parties. Grain Trade Rule 10 addresses the options available to the buyer under these conditions. The plaintiff and defendant were unable to agree upon a price for the shortage and the plaintiff appeared to have exercised due diligence in buying the shortage. It was stated that the defendant was advised of the actions and was offered the option of shipping or finding a cheaper source of wheat. This was not disputed.

The arbitration panel therefore awarded the plaintiff \$2,119.02, plus interest, from April 18, 1985 (the day after the shortage was discovered) to the date the award is paid. Interest on \$14,714.60 also should be paid from April 18, 1985 until August 16, 1985. Interest should be figured at 1 percent over the prime rate paid by the New York banks.

Submitted with the consent and approval of the arbitration panel, whose names are listed below.

Robert W. Pegan, chairman
Central States Enterprises Inc.
Camilla, Ga.

Paul Trower
Evans Grain Co.
Salina, Kan.

Roy Pinske
Benson Quinn Co.
Minneapolis, Minn.