



March 28, 1991

Arbitration Case Number 1677

PLAINTIFF: Clarence Firari, Madison, Wis.

DEFENDANT: Vita Plus Corp., Madison, Wis.

Statement of the Case

The plaintiff, Clarence Firari, signed a contract with the defendant, Vita Plus Corp., on March 18, 1987 to deliver free of any encumbrances 18,851.8 bushels of corn to the company's Columbus Mills Division at a price of \$1.37 per bushel during April 1987. Evidence of delivery was to be represented by the return of canceled warehouse receipt number 0907.

On March 13, 1987, prior to the contract date, Eugene Niehoff, manager of the defendant's facility, explained — both verbally and in writing — the results of the PIK-and-roll process if executed on that date (March 13, 1987) and if accomplished with all purchased generic commodity certificates.

The plaintiff delivered \$10,734.16 of his own generic certificates to Vita Plus Corp. in the last few days of April 1987; the balance of generic certificates needed to redeem the CCC price support loan was furnished by the defendant. The loan was redeemed on May 11, 1987 and on the same day, Vita Plus Corp. prepared and mailed a settlement to Mr. Firari accompanied by a check in the amount of \$6,106.27. The results were far different than would have been realized had the transaction been completed on March 13.

The Claim

Firari claimed that the defendant was negligent in not having redeemed the price support loan through PIK-and-roll during the first part of April. Firari claimed that the defendant owed the plaintiff the difference in values, as well as storage costs resulting from the delayed date of settlement, which combined amounted to \$6,792.93. Further, Firari claimed Niehoff, Vita Plus Corp.'s man-

ager, agreed to either pay Firari the loss personally or to give Firari free Pioneer seed corn to compensate for the alleged loss.

Both of these allegations were denied by both Vita Plus Corp. and Niehoff. Further, Vita Plus Corp. requested that it be reimbursed for its \$400 arbitration fee and \$1,000 in attorney's fees for a total of \$1,400.

The written documents provided to the arbitrators concerning this case consisted of the PIK-and-roll illustration dated March 13, 1987; the contract dated and signed on March 18, 1987; a settlement summary dated May 11, 1987; a commodity certificate loan redemption worksheet dated May 11, 1987; and two sheets of commodity market rates, one for April 1 and the other for May 11, 1987.

The Decision

The arbitrators made the following conclusions and findings in this case:

- The plaintiff, Clarence Firari, signed a contract agreeing to deliver to the Columbus Mills Division of Vita Plus Corp. 18,851.8 bushels of corn during the month of April 1987. The arbitrators acknowledged that Niehoff, manager of the Vita Plus facility, did illustrate a PIK-and-roll transaction and its results on March 13, 1987. There is, however, no reference that it was the responsibility of the defendant to provide generic certificates and to perform the actual redemption of Firari's price support loan. Therefore, the arbitrators found that it was the plaintiff's responsibility to redeem his own loan and to deliver the corn (as represented by the canceled warehouse receipt) to the defendant as agreed contractually.

There was no evidence of any agreement to reimburse by Niehoff or to furnish free seed to compensate for the loss; thus this claim was irrelevant to this case.

As a result, the settlement should stand as made, with no further compensation to the plaintiff.

■ The defendant, Vita Plus Corp. is not entitled to reimbursement of either its arbitration fee or attorney's cost. The firm agreed to the arbitration and the cost associated with the case.

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

Dale C. Seyler, *chairman*
Colorado Commodities
Greeley, Colo.

Ann Lundin
Terminal Grain Corp.
Sioux City, Iowa

Steve Patton
Mid-States Terminals Inc.
Toledo, Ohio