



Dispute Over Price



Case No. 11 – 1989

Claimants:	Sellers
Respondents:	Buyers
Product:	Palm Fatty Acid Distillate (PFAD)
Contract:	PORAM Contract No. 2 – Joint PORAM / MEOMA FOB Contract for Processed Palm Oil and Palm Kernel Oil Products in Bulk
Matters in Dispute:	Non-Lifting of the Cargo by the Respondents Resulted in the Claimants' Claim of the Difference Between the Contract Price and Market Price.
Year of Award:	1989

MATTERS AT ISSUE

1. The Claimants entered into two contracts with the Respondents for 2x500 MT of PFAD for shipment during September at the price of US\$325 PMT FOB Port A.
2. Before the shipment date, the Respondents requested to convert the contract to delivery basis Singapore due to difficulties in confirming vessel space. The Claimants were willing to accommodate the Respondents provided they agreed to pay the Claimants RM20 PMT being transport and bulking charges incurred and US\$5 being the conversion charges to delivered basis Singapore.
3. The Respondents, however, counter-proposed to lift the cargo ex-Malaysia at the contract price. The Claimants then accepted the Respondents' counter-proposal on the following conditions:
 - a. The oil is to be collected from installation tanks latest the next day, or
 - b. The Respondents to collect the oil latest 4th October 1988 without any penalty or discount, or
 - c. The Claimants can deliver the oil to the Respondents' tanks at Malaysia or their refinery in Port A without any additional charges or discount.

The Respondents were requested to respond to the Claimants' proposal on the same day failing which the Claimants will hire spot tank at FOB installation and all related charges will be for the Respondents' account.

4. On the same day via telex, the Respondents notified the Claimants that they would collect oil from the factory by 10th October 1988 and would pay for any interests incurred for delay. The Claimants informed the Respondents that they were unable to agree to delay the collection and would hold them responsible for all consequential charges.
5. Subsequently, the Claimants were requested to arrange spot tank at Malaysia on behalf of the Respondents and all charges incurred would be for the Respondents' account.

6. On 4th October 1988 the Respondents confirmed that they would be collecting the oil on/about 12th -15th October 1988. As a final attempt to resolve the matter, the Claimants on 6th October 1988, allowed the Respondents up to 10th October 1988 to fulfil their contractual obligation, the Respondents had by 1500 hours to confirm that they will lift cargo and to open Letter of Credit by telex immediately.

The Claimants contended that up till 13th October 1988 they did not receive the Letter of Credit from the Respondents nor their notification to lift cargo and it was evident that the Respondents had no intention to fulfil their contractual obligation despite efforts to settle the matter amicably.

The Claimants are now claiming the sum of US\$40,000 being the price difference between the contract price and market price as well as extension charges at 1.5% of the total contract value amounting to US\$4,275 and costs of arbitration and other expenses as the Arbitrators deem fit.

7. The Respondents did not make any submissions nor submit any documentary evidences and as such the Arbitrators relied on the submissions and documentary evidences submitted by the Claimants only.

ARBITRATORS' FINDINGS

1. The Respondents did not dispute the washout price of US\$285 PMT, this was evident in their telex to the Claimants via their brokers:

"Re: 2 x 500 MT PFAD FOB Port A

We will agree to accept a washout at US\$285 FOB based on today's market price. However, we do not agree to an additional charge of RM20 PMT from tank charges as this is already incorporated into the FOB price at time of contract.

Since we are not taking the oil now but to washout on FOB basis we should not be bearing the tank storage charges.

We also do not agree to a 1.5% extension charge.

Thanks and regards."

2. It is clear that the Respondents contested the 1.5% extension charges imposed by the Claimants. Having gone through all the documentary evidences filed by the Claimants we find that there was an implied or expressed desire by both parties to extend and fulfil the contract beyond the contract period by the fact that there were negotiations between both parties as to settlement and fulfilment of the contract. In this respect, the Respondents had failed within a reasonable time allowed beyond the contract period by the mere fact that there were negotiations between both parties as to settlement and fulfilment of the contract. In this respect, the Respondents had failed within reasonable time allowance beyond the contract period to fulfil their obligations and therefore the Claimants have the right to charge the extension charges of 1.5% of the contract price and we accordingly award the dispute in favour of the Claimants.



PORAM The Palm Oil Refiners Association of Malaysia

THE AWARD

We accordingly award the dispute in favour of the Claimants and direct the Respondents to pay the Claimants within fourteen (14) days of the date of the Award, the sum of US\$40,000 being the price difference between the contract price and market price on 14th October 1988 and extension charges of 1.5% of the total contract amounting to US\$4275.00.

If payment is not made within fourteen(14) days of the date of this Award interest at 10% per annum to accrue from the date of award until the date of payment. The date of this Award shall be taken as from date of dispatch on this Award by PORAM.

The MOPGC/PORAM exchange rate prevailing on the date of the closing out price will apply for any exchange conversions should the settlement be required by law to be made in Malaysian Ringgit.

We further award that the Respondents pay the cost of this arbitration proceeding as charged by PORAM.