

Commodity Futures Trading Commission
CEA CASES

NAME: GENERAL FOODS CORPORATION, CHARLES W. METCALF, DANIEL F. RICE AND COMPANY, DANIEL F. RICE, LAWRENCE J. RYAN, AND PHILIP R. O'BRIEN

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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re General Foods Corporation et al., Respondents

CEA Docket No. 34

Referee's Report

Preliminary Statement

1. This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), involving charges by the complainant (usually called the government herein), now the Production and Marketing Administration, that the respondents, General Foods Corporation and Charles W. Metcalf of New York City, and Daniel F. Rice and Company, Daniel F. Rice, Lawrence J. Ryan, and Philip R. O'Brien of Chicago, had manipulated and cornered rye and rye futures in Chicago, and that General Foods Corporation had exceeded the trading limits in rye futures. The complaint was issued on May 26, 1945, by Ashley Sellers, Assistant War Food Administrator, and on June 15, 1945, he designated Jack W. Bain, Office of the Secretary, as referee. On July 31 and August 1, 1945, Respondents Rice, Rice and Company, General Foods, and Metcalf filed motions questioning the authority of an Assistant War Food Administrator to issue the complaint. The powers exercised by the War Food Administrator were transferred back to the Secretary of Agriculture, effective June 30, 1945 (E.O. 9577, 3 CFR, 1945 Supp., Page 84), and on August 8, 1945, the Secretary ratified and adopted

the complaint and designation of referee issued by the War Food Administration.

2. All of the respondents filed answers admitting some of the facts alleged but denying any manipulation or corner, but General Foods and Metcalf did not deny that the trading limits were exceeded in one instance. After some postponements, a prehearing conference was held in Washington on November 26, 1945, and the hearing was set for December 11, 1945, in Washington. It was set for Washington instead of Chicago, the place of the alleged manipulation and corner, at the request of Respondent O'Brien, which request was concurred in by the other parties.

3. At the appointed time and place the hearing began before Referee Bain, Charles W. Buoy, John S. Griffin, and Ben Ivan Melnicoff of the Washington office, Office of the Solicitor, appeared for the government. Edward R. Adams and William Simon of Miller, Gorham, Wescott & Adams of Chicago appeared for General Foods, James A. Sprowl and Albert E. Jenner of Poppenhusen, Johnston, Thompson & Raymond of Chicago appeared for Metcalf; Lee A. Freeman of Rooks and Freeman of Chicago appeared for Rice and Rice and Company, Joseph B. Crowley of Bowden, Taylor and Norville of Chicago appeared for Ryan; and Howard W. Vesey and William A. Clineburg of Vesey, Wheeler & Prince of Washington appeared for O'Brien. Sessions of the hearing were held on 14 different days, ending on May 21, 1946, there having been various periods of adjournment between sessions.

4. Before and at the opening of the hearing, the referee denied motions by one or more respondents to dismiss on various grounds, including alleged unconstitutionality of the statute and of particular parts of it, and claims that the complaint was vague and not in proper form, that cornering and past attempts to manipulate were not covered by section 6(b) of the act, and that the Secretary did not have reason to believe that the act had been violated when he issued the complaint. None of the alleged grounds for dismissal were well taken, and the referee's denial of the motions was correct. Motions for severance were properly denied by the referee because the respondents were charged with acting together and it would have been an unnecessary waste of time and expense to have a number of separate hearings to go over the same set of facts.

5. The transcript contains 1,585 pages, and 93 exhibits were introduced, many of which contain a number of pages. The exhibits and testimony are so voluminous that no attempt is made to summarize them. So many points, minor as well as major, were contested that even a listing of them all would tend to obscure the material issues. The entire record has been considered, including the various contentions, exceptions, motions, requests, and arguments of the parties on each point raised. Some of these are specifically mentioned below in the Conclusion. Failure to mention the others does not mean that they have not been considered nor that they are still pending, and the issuance of this order may be considered as denying or overruling every recorded request or contention inconsistent with such issuance.

6. During the presentation of evidence by the government, respondents were allowed, for the convenience of all concerned, to present some direct testimony and to introduce exhibits, without prejudice to their moving for dismissal when the government completed its case. On April 16, 1946, when the government rested, the Rice respondents were allowed to recall three witnesses for further cross-examination. The respondents then filed motions to dismiss, and the hearing was recessed. Briefs were filed on these motions, and oral argument was held on them on May 14, 1946, in Washington, at the close of which the referee denied the motions, and the hearing was again recessed. His denial was proper, as the government had presented a prima facie case against each respondent.

7. At the next session of the hearing, on May 21, respondents rested. The government then requested that official notice be taken of a number of matters, to which respondents objected. Within the period of time allowed by the referee at their request, respondents filed objections and briefs against the taking of official notice, and on June 19, 1946, the referee denied the request on the ground, which is here approved, that a clearer record would be made if so many figures were presented through witnesses or tabulated and offered in evidence as exhibits. Respondent General Foods then requested that official notice be taken of a number of matters. The referee refused to take notice for General Foods for the same reason that he denied the

government's request, and detached "exhibits" which General Foods had attached to its request on the ground that it would be unfair to admit into the record in this manner documents which were numbered as and appeared to be, exhibits duly admitted in evidence. General Foods objected, claiming that due process requires that the record contain these "exhibits" as presented. It is the referee's duty to obtain a fair and orderly record, and to do this he must exclude matters which would make the record unfair or disorderly. We do not think the filing of the written request to take official notice gave General Foods a constitutional right to place in the record the documents in question, nor does it appear that the referee abused his discretion in excluding them from the record.

8. The parties were allowed until July 12, 1946, to file suggested findings and briefs, and all did so, respondents recommending dismissal and the

government recommending an order against all respondents. In the various pleadings and briefs filed, the matters in issue are discussed at considerable length.

9. The record supports the findings set out below. Many other findings could be made on various contentions raised by the parties but which we deem immaterial, and such other findings being unnecessary, they are not made. For convenient reference, consecutive numbers have been given to the paragraphs of this order instead of to the Findings of Fact only.

Proposed Findings of Fact

10. Respondent General Foods Corporation, herein called General Foods, is a Delaware corporation having its principal place of business and office in New York, New York. At all times material herein it had membership trading privileges on the Board of Trade of the City of Chicago, herein called the Chicago Board of Trade, a contract market.

11. Respondent Charles W. Metcalf, New York, New York, was Executive Vice President of General Foods and a member of the Chicago Board of Trade at the time of the transactions involved herein, but he is not now an officer of General Foods. He had charge of and handled the rye and rye futures trading of General Foods involved herein. He resigned from General Foods because there were objections within the corporation to his having traded in rye for himself while directing the corporation's rye trading.

12. During the period December 1942 through May 1944 Respondent Daniel F. Rice and Company, herein called Rice and Company, was a partnership composed of Respondent Daniel F. Rice, of Chicago, Illinois, Joseph J. Rice, Walter T. Rice, and William F. Rowley, having its principal place of business in Chicago, Illinois. In January 1945 Joseph A. Fagan became a partner. At all times material herein the partnership was registered under the Commodity Exchange Act as a futures commission merchant, and all partners except Fagan and Walter T. Rice were members of the Chicago Board of Trade.

13. Respondent Lawrence J. Ryan, Chicago, Illinois, was at all times material herein a member of the Chicago Board of Trade and was registered under the act as a futures commission merchant.

14. Respondent Philip R. O'Brien, Chicago, Illinois, was at all times material herein a member of the Chicago Board of Trade and was registered under the act as a floor broker. During 1944 he was President of the Chicago Board of Trade.

15. During the period here involved, General Foods was not a user of rye and had no need for it. Its holdings of rye and rye futures were speculative, not being offset by sales of or needs for rye. The same is true for the rye and rye futures held and controlled by each of the other respondents.

16. In December 1942 and January 1943 General Foods bought 1,065,000 bushels of May 1943 rye futures and 945,000 bushels of July 1943 rye futures on the Chicago Board of Trade, getting a net long position of 2,000,000 bushels, the maximum speculative position which it could legally attain (17 CFR, 1938 Supp., 150.1). It held this position until May 1943, when it began taking delivery on its May futures. As it received delivery, it purchased more futures, generally maintaining its 2,000,000 long futures position, except that on May 8, 1943, it held 20,000 bushels of speculative rye futures in excess of the limit.

17. During May 1943 General Foods took delivery of 2,420,000 bushels of rye on its futures contracts, and in addition purchased from Rice and Company 540,000 bushels of deliverable rye, deliverable rye

meaning rye of such grade and in such position as to be deliverable in satisfaction of rye futures contracts under the rules of the Chicago Board of

Trade. It held the rye in Chicago, and on May 29, 1943, its 2,960,000 bushels constituted approximately 52 percent of the total of 5,697,985 bushels of deliverable rye then in Chicago.

18. When the May 1943 rye future expired, General Foods bought enough of the July and September 1943 rye futures to continue its 2,000,000 bushels long futures position. It held the rye acquired in May and it took delivery on 2,040,000 bushels of July futures, so that at the end of July 1943 its 5,000,000 bushels constituted about 69 percent of the 7,274,202 bushels of deliverable rye in Chicago.

19. On September 4, 1943, General Foods had received delivery of its 350,000 bushels of September rye futures, giving it 5,350,000 bushels, or 66 percent of the 8,095,464 bushels of deliverable rye in Chicago. In October and November, it bought 1,880,000 bushels of December 1943 rye futures, and in December took delivery, giving it 7,230,000 bushels on December 31, 1943, or 76 percent of the 9,487,525 bushels of deliverable rye in Chicago.

20. From April 24 to December 25, 1943, the deliverable supply of rye in Chicago rose from 3,273,726 to 9,495,003 bushels, an increase of 6,221,277 bushels. During this period General Foods took delivery and held 8,690,000 bushels, or more than the increase in the deliverable supply.

21. In November 1943 the Business Conduct Committee of the Chicago Board of Trade considered the "commanding position" of General Foods in rye and called Respondent Metcalf before the committee, as it was Metcalf's membership on the Board of Trade which was so registered as to give General Foods its membership trading privileges. At a meeting of the committee on November 29, 1943, the committee told Metcalf that the "combined position" of General Foods and himself in rye and December rye futures "might tend to create a corner and be in a position to dominate price movements." Metcalf then agreed with the committee: (1) that neither he nor General Foods would purchase any more December 1943 rye futures without prior consent of the committee; (2) "That neither he nor the corporation would purchase warehouse receipts for Chicago Rye without prior consultation with and consent of the Committee"; and (3) that he would be available for further consultation. The quotations in this paragraph are from the minutes of the Business Conduct Committee.

22. On December 6, 1943, the Business Conduct Committee wrote Metcalf denying his request that he and General Foods be released from the agreement not to purchase rye and rye futures. On January 4, 1944, Metcalf wrote the committee that the agreement not to purchase rye futures and rye had been fulfilled and that he felt free to buy and sell rye futures, but the committee answered on January 6 that "this Committee in of the opinion that any further purchases of Rye in cash

or futures would constitute an attempt to corner Rye stocks in Chicago for the purpose of manipulating or controlling the price of that commodity."

23. In December 1943 General Foods employed Rice and Company to merchandise its rye, but neither party to the contract of employment kept any record of it. By May 27, 1944, Rice and Company had not merchandised or delivered any of the rye held by General Foods in Chicago.

24. On March 21, 1944, Rice and Company wrote the War Food Administration that it was authorized to offer the rye of General Foods "to any processors who had use for it or to agencies of the Government who had the authority to make such purchases." Enclosed in the letter was an article from a newspaper, dated New York, March 19, stating that a spokesman for General Foods said that it was not a user of rye and would sell its rye "to the government or any other user who has need for it" and that the rye was "available to any user in need of it."

25. On June 23, 1944, Charles W. Metcalf told an investigator for the government that many offers had been made to sell the rye of General Foods to

the government and other users of rye, but that no offers had been made to speculators. By restricting offers to the government and to "users" of rye, respondents kept their rye from becoming available to others for delivery on Chicago rye futures.

26. On November 27, 1943, Daniel F. Rice was short 170,000 bushels of Chicago May 1944 rye futures. On November 29 he switched from this short position to a long position of 180,000 bushels, which he increased

to 1,200,000 bushels on December 21. He remained long on through the first four months of 1944, being long 590,000 bushels on April 29, 1944. In December 1943 he accumulated 305,000 bushels of cash rye, by taking delivery on futures and by purchase. This was increased to 358,400 bushels of deliverable rye in Chicago on April 29, 1944.

27. On September 30, 1943, Daniel F. Rice held a long position of 560,000 bushels of May 1944 rye futures on the Winnipeg Grain Exchange, Winnipeg, Canada. He increased this position until he held 1,010,000 bushels on April 29, 1944, and took delivery of and held all of it in Winnipeg in May 1944.

28. During the period October 1943 through May 1944 Daniel F. Rice controlled or directed the trading of 23 customers of Rice and Company in rye on the Chicago and Winnipeg markets. Those are called Schedule A customers, as they were listed in Schedule A attached to the complaint.

29. During late 1943 and early 1944 Schedule A customers bought May 1944 rye futures on the Chicago Board of Trade and Winnipeg Grain Exchange, through Rice and Company, and took delivery in May 1944. On May 27 they held 2,305,000 bushels in Chicago out of 2,705,000 bushels they received on delivery there, and at Winnipeg they hold 700,000 out of 805,000 bushels received on delivery.

30. On December 15, 1943, the Rice and Ryan account, owned equally by Daniel F. Rice and Lawrence J. Ryan, switched from a short position in the Chicago May 1944 rye future to a long position, and maintained

the long position into May 1944. On April 29 it was 165,000 bushels long. It increased its holdings of deliverable rye in Chicago, by receiving delivery on futures contracts, from 44,984 bushels on September 30, 1943, to 289,336 bushels on April 29 and 342,282 bushels on May 11, 1944.

31. On April 12, 1944, the Rice and Ryan account bought 200,000 bushels of Winnipeg May 1944 rye futures, took delivery in May 1944, and was holding the 200,000 bushels of rye in Winnipeg on May 27.

32. Lawrence J. Ryan had been long Chicago May 1944 futures from October 1, 1943, but on November 29 he increased this long position from 260,000 to 575,000 bushels, and continued to increase it until he was long 1,215,000 bushels on January 4, 1944. He remained long through the first four months of 1944, being long 945,000 bushels on April 29. In December 1943 he took delivery of 140,000 bushels of rye, and on April 29, 1944, he held 105,000 bushels of this deliverable rye in Chicago.

33. In May 1944 Lawrence J. Ryan took delivery of 120,000 bushels of rye on Winnipeg Grain Exchange May 1944 rye futures contracts, and on May 27 was holding 100,000 bushels of this rye in Winnipeg.

34. On December 31, 1943, Rice, Schedule A customers, and Ryan held 974,984 bushels of deliverable rye in Chicago. When added to the 7,230,000 bushels held by General Foods, this constituted over 86 percent of the deliverable rye in Chicago (Paragraph 19).

35. On December 31, 1943, Philip R. O'Brien was long 120,000 bushels in the Chicago May 1944 rye future. After talking to Daniel F. Rice, on January 4, 1944, O'Brien purchased 405,000 bushels more, and continued to purchase such future until on February 14, 1944, he held 2,025,000 bushels, being 25,000 bushels in excess of the limit for speculative holdings in any one future (17 CFR, 1938 Supp., 150.1). He maintained a large long position in that future for the first four months of 1944, and on April 29, 1944, was long 1,480,000 bushels in it. During May 1944 he took delivery of 735,000 bushels of rye on his Chicago May 1944 rye futures contracts.

36. During the first five months of 1944 Charles W. Metcalf traded in rye and rye futures for himself, Mrs. Metcalf, Barbara Metcalf, and G. E. Platt. Of the four accounts, the combined position in the Chicago May 1944 rye future was short and long at various times during this period until April 19, when it went from 175,000 bushels net short to 5,000 bushels net long, and on April 26 this long position was increased to 125,000 bushels. These accounts held 50,000 bushels of deliverable rye in Chicago from January 26 to May 13, 1944. Metcalf failed to file some of the reports required under the Commodity Exchange Act in connection with these holdings.

37. On December 24, 1943, Rice, Schedule A customers, Ryan, and O'Brien were long 5,645,000 bushels in the Chicago May 1944 rye future, their holdings constituting about 26 percent of the 21,715,000 bushel open interest in that future. On February 11, 1944, they were long

7,950,000 bushels, or about 38 percent of the 21,077,000 bushel open interest. On April 29, 1944, the first day on which notice could be issued to deliver rye in satisfaction of Chicago May 1944 rye futures contracts, they were long 5,695,000 bushels, about 46 percent of the 12,404,000 bushel open interest.

38. From December 31, 1943, through April 29, 1944, the volume of deliverable rye in Chicago and Chicago May 1944 rye futures contracts held by Rice, Schedule A customers, Ryan, O'Brien, and General Foods exceeded the total volume of deliverable rye in Chicago.

39. On April 29, 1944, the respondents mentioned in Paragraph 38 held 13,897,755 bushels of deliverable rye in Chicago and Chicago May 1944 rye futures. There were then 12,766,950 bushels of rye of all grades in Chicago, of which 12,390,660 bushels were deliverable on Chicago futures contracts.

40. On April 28, 1944, Daniel F. Rice initiated a proposal that the Chicago Board of Trade pass a regulation which would thereafter prevent delivery on Chicago futures contracts of rye and other grain imported into the United States unless the import duty for grain to be used as food had been paid, there being an act of Congress then in effect exempting from the import duty grain to be used for livestock feed. Philip R. O'Brien favored the proposal. When counsel for the Board of Trade advised that adoption of the proposed regulation would not be proper, no action was taken to adopt it. The proposal was an attempt to reduce the amount of deliverable rye in Chicago.

41. Through the month of May 1944 Daniel F. Rice, Schedule A customers, and Lawrence J. Ryan held 2,010,000 bushels of rye in Winnipeg (Paragraphs 27, 29, 31, and 33). This is the rye Rice referred to when he told an investigator for the government that he was holding 2,000,000 bushels of rye in Winnipeg to keep it from coming to Chicago. This rye was withheld to prevent its being used for delivery on Chicago May 1944 rye futures contracts.

42. In May 1944 Rice and Company, Rice (for himself and Schedule A customers), Ryan, and O'Brien received 3,980,000 bushels of rye in satisfaction of Chicago May 1944 rye futures contracts, redelivered 230,000 bushels, and held in Chicago 3,750,000 bushels, or over 91 percent of the 4,100,000 bushels of rye delivered on Chicago May 1944 rye futures contracts.

43. Between December 1, 1942, and May 5, 1944, the price of rye futures on the Chicago Board of Trade rose from \$.64-1/4 to \$ 1.32-5/8 per bushel. This price increase was accompanied by: (1) an increase in the deliverable supply of rye in Chicago from 3,273,726 bushels on April 24, 1943, to 12,521,062 bushels on May 6, 1944; (2) an increase in the rye of all grades in storage and afloat at Chicago from 5,015,063 bushels on April 24, 1943, to 13,056,025 bushels on May 6, 1944; and (3) an increase in the visible supply of rye from 21,929,000 bushels on October 2, 1943, to 23,065,000 bushels on May 6, 1944.

44. The price per bushel of the Chicago May 1944 rye future reached a high for the month of May 1944 of \$ 1.32-5/8 on May 5. It then began

to drop, and reached a low for the month of \$ 1.11 on May 22, the last day of trading in the future.

45. The drop in price mentioned in Paragraph 44 was accompanied by deliveries of substantial quantities of rye on Chicago rye futures contracts and by indications that enough rye would be shipped to Chicago to make delivery on all May 1944 rye futures contracts. The delivery of comparable quantities of rye on the May 1943 Chicago rye future in May 1943 was not accompanied by a drop in the price of the May 1943 future, which was below that of the Chicago July and September 1943 futures.

46. During April 1944 and on until trading closed in the Chicago May 1944 rye future on May 22, 1944, the price of such May future was less than that of the Chicago July and September 1944 rye futures. On April 29, 1944, such May future was 2 cents per bushel less than the July and 5-3/4 cents less than the September future.

47. Some time before May 13, 1944, Philip R. O'Brien received a call for margin in connection with his rye transactions, but he could not respond to the call. He told Daniel F. Rice of the situation and Rice put the proposition up to General Foods. As a result, O'Brien sold General Foods, through Rice, 665,000 bushels of rye on May 13 and 15, 1944. On May 13 he owned only 530,000 bushels of rye, but he bought 60,000 bushels on May 15 and took delivery on Chicago futures contracts of 25,000 bushels on May 16, 10,000 bushels on May 17, and 76,000 bushels on May 18.

48. Shortly before May 13, 1944, there was a meeting in Charles W. Metcalf's office in the offices of General Foods in New York, of which

meeting General Foods kept no written record. It was attended by Chairman of the Board Clarence Francis, President Austin S. Igleheart, and Executive Vice President Metcalf, all of General Foods, and Daniel F. Rice and Philip R. O'Brien. At the meeting General Foods was advised that 2,000,000 bushels of "distress rye" was about to be dumped on the market, which, in the words of the Chairman of the Board of General Foods, would "have the very definite effect of depreciating the value of our holdings" Rice recommended that General Foods acquire such rye. General Foods authorized the purchase of the rye, and the taking of a short position of an equal quantity in the Chicago July rye future.

49. In June 1944 Philip R. O'Brien told an investigator for the government that the reported presence of O'Brien and Rice in New York on April 25 and 26, 1944, was not in connection with the rye market. He did not mention that he and Rice had been at a meeting in New York in connection with rye in April or May.

50. As a result of the authorization mentioned in Paragraph 48, on May 13, 15, 16, 17, 18, and 23, 1944, General Foods purchased, through Daniel F. Rice, 1,999,466.14 bushels of deliverable rye in Chicago. This consisted of 140,000 bushels from Schedule A customers, 355,000 bushels from Rice, 495,000 bushels from Ryan, 344,466.14 bushels from the Rice and Ryan account, and 665,000

bushels (mentioned in Paragraph 47) from O'Brien. When the Rice and Ryan account rye is divided between its two owners, the amount of Ryan's rye involved is 667,233.07 bushels, the exact amount of Rice's when the Schedule A customers are included.

51. Before the purchase of this rye by General Foods there was no consultation with the Business Conduct Committee, as mentioned in Paragraphs 21 and 22.

52. The purpose of the transactions mentioned in Paragraph 50 was to support the price of rye by preventing a drop in price that would have been caused if the rye purchased and held by General Foods had got into the open market and out of the control of respondents.

53. About May 5 and 6, 1944, there were rumors around the Chicago Board of Trade that General Foods had "sold out to Cargill" or was disposing of large quantities of its rye. On May 8 Charles W. Metcalf telephoned Philip R. O'Brien, wanting to know if something could be done to stop the rumors. The conversation was followed by a telegram from Metcalf to O'Brien denying that General Foods was disposing of its rye. At Metcalf's request O'Brien showed the telegram to some of the men on the trading floor and the news quickly got around that the telegram had been received.

54. On June 23, 1944, Charles W. Metcalf told an investigator for the government that the taking delivery of rye and holding it by General Foods had caused the nearest maturing future to be higher than the deferred future (See Paragraph 46). He promised that there would be no corner in the July 1944 future, stating that he would see to it that General Foods offered enough rye in the market to keep it liquid, and that the price would not go higher in July than the price that prevailed in May.

55. From late in 1943 until up in May 1944 the respondents noted together, jointly, collectively, and in concert to acquire rye and May 1944 rye futures holdings in Chicago which exceeded the deliverable supplies of rye in Chicago (Paragraphs 38 and 39).

56. Respondents' activities in rye were among the principal causes of the increase in price of rye futures and the increase of rye in Chicago mentioned in Paragraph 43, the excess of the price of the May over the July and September futures mentioned in Paragraph 46, and the drop in price mentioned in Paragraph 44, and they caused the Chicago May 1944 rye futures prices to be artificial manipulated prices.

57. Respondents tried to corner Chicago rye and rye futures, and for a time were successful in doing so. Their corner was broken during May 1944 principally by the bringing of large quantities of deliverable rye into Chicago, much of which was done by Cargill, Inc. They tried to and did manipulate the prices of rye and rye futures in Chicago, raising them above what they would have been on a free and open market (Paragraph 56), and preventing them from dropping (Paragraph 52).

Proposed Conclusions

58. Section 2 of the act (7 U.S.C. 4) makes both the agent and principal responsible for acts of the agent within the scope of his authority. Accordingly, for the purposes of this proceeding, Metcalf is equally responsible with General Foods for the corporation's dealings in rye.

59. It is rather apparent that respondents, by obtaining and retaining such a large proportion of rye and rye futures in Chicago, dominated the rye market in Chicago, manipulated the price of rye futures and rye, and cornered Chicago rye and rye futures, as shown in the Findings of Fact. Respondents do not dispute

the figures, the amounts of their holdings, prices, etc., but make various claims in arguing that their holdings should not be combined, that there was no corner, that Cargill was responsible, etc.

60. Respondents say there is no evidence that they acted together. There are many circumstances and situations, shown in the Findings, that are clearly explained only by joint actions. When respondents, confronted with these, offer no other plausible explanation, only one conclusion can be drawn from the evidence, that of one purpose, participated in and furthered by each and all. It is unnecessary to repeat all these circumstances here, but a few questions will point to the significance of some of them. Why did General Foods not keep a record of its agreement with Rice and Company, involving millions of dollars worth of rye? And of the meeting about the two million bushel purchase? Why were offers restricted to "users" of rye? Was General Foods not concerned when Rice and Company failed to sell its rye? Or was that what Rice and Company was supposed to do? Why did Rice and Ryan hold rye in Canada to keep it from Chicago? Why did Rice, Ryan, and O' Brien take and hold rye in Chicago when they could have made money by selling it and buying the July and September futures? Were the quantities in the two million deal

divided equally between Rice, Ryan, and O' Brien by mere coincidence? If there is an answer to any of these, and other questions raised by the facts, why did Rice, Ryan, O'Brien, and Metcalf fail to give it?

61. Respondents complain that there is no charge of conspiracy here, and that they do not know what the charge of collective action means, the word collective having no meaning in law. It may be that the facts alleged in the complaint in this proceeding would constitute a conspiracy to commit an offense against the United States, so as to warrant criminal proceedings under 18 U.S.C. 88, but that is immaterial here, for Congress has not given us jurisdiction over such matters. It has given us certain jurisdiction over violations of the Commodity Exchange Act, whether committed by one only or by five or six, and that jurisdiction is what we are here exercising. It would have been entirely ineffective, if not even improper, to allege conspiracy in this proceeding. As to what collective means, we think respondents know, and as Congress has used the word in legislation (e.g., 15 U.S.C. 839, 29 U.S.C. 157, 45 U.S.C. 152), we suppose that Congress and the courts know what it means. We do not think its use misled respondents in any way.

62. In arguing that there was no corner, respondents say that under present conditions there can be no corner in Chicago, but that to run a corner one must get control of the commodity over the whole country. The reason given is that after trading in the future stops, there are now seven days in which rye can be brought into Chicago for delivery on the future. This may make it more difficult to get a corner and make the

effect less severe as the month draws to a close, but we do not agree that as a matter of law there is no such thing as a corner of one market. What was charged and what is here involved is a corner on one rye market, Chicago.

63. Some of the respondents spent much time at the hearing and in their briefs complaining of the acts of Cargill, Inc., in the rye market. The record contains exhibits showing some of Cargill's activities in rye, but we have found nothing in these which would alter or affect any of the findings herein, or excuse any of the acts of respondents which we consider violations of the act. Even if it were shown conclusively in this record that Cargill had violated the act, which has not been shown, this would not excuse respondents' manipulation and corner.

64. The purchase by General Foods of 2,000,000 bushels of rye in May 1944 to prevent a drop in price was clearly an attempt to influence, or manipulate, the price of rye, and quite likely did so. No one denied its purpose. All of the

respondents were involved in this transaction. Even if separated from other matters here involved, this one incident constituted a serious violation of section 9 of the act (7 U.S.C. 13). The mere fact that General Foods held so much rye that it was to its pecuniary advantage to keep the price up did not give it and the other respondents the right to influence the price as they tried to do and probably did here. When considered in connection with respondents' other activities, this violation was even more serious.

65. When General Foods and O'Brien made such purchases as to give them speculative holdings exceeding the two million bushel limit (Paragraphs 16 and 35), they violated section 4a of the act (7 U.S.C. 6a). Ordinarily this would authorize a suspension order against General Foods, Metcalf, and O'Brien (In re Martin et al., 5 Agric. Dec. 435 (5 A.D. 435), 1946), but as the complaint did not explicitly charge O'Brien with exceeding the limit, and as these violations are of negligible importance in comparison with the other matters involved, no sanction is invoked because of them. Also, no sanction is involved because of Metcalf's failure to file complete reports (Paragraph 36).

66. We agree with the government's suggestion that while Ryan and O'Brien participated in and contributed to the manipulation and the corner, they were not the motivating factors. General Foods and its vice president accumulated a large quantity of rye, thus creating the situation which made the corner possible, gave Rice control of these holdings, and went along with his handling of them. Their responsibility for the situation is greater than that of Ryan and O'Brien. Rice and his company were the experts employed by General Foods to handle the situation, and they were the dominant and directing figures after the employment. The sanctions invoked against Rice, Metcalf, and their companies should be greater than those against Ryan and O'Brien.

67. The registration of Rice and Company should be revoked, the trading privileges on contract markets of Rice, Rice and Company,

General Foods, and Metcalf should be suspended for a year, and the registrations and trading privileges of Ryan and O'Brien should be suspended for 60 days.

Proposed Sanctions

68. The registration of Daniel P. Rice and Company as a futures commission merchant is revoked.

69. The registration of Lawrence J. Ryan as a futures commission merchant is suspended for 60 days.

70. The registration of Philip R. O'Brien as a floor broker is suspended for 60 days.

71. All contract markets shall refuse Respondents General Foods Corporation, Charles W. Metcalf, Daniel F. Rice and Company, and Daniel F. Rice, and each of them, all trading privileges thereon for a period of one year, and shall refuse Respondents Lawrence J. Ryan and Philip R. O'Brien, and each of them, all trading privileges thereon for a period of 60 days.

72. The revocation, suspensions, and refusals of trading privileges mentioned in the preceding four paragraphs shall begin on the 40th day after this date. Copies hereof shall be served on the parties or their counsel of record, and on each contract market.

/s/ Jack W. Bain

Referee

September 10, 1946.

LOAD-DATE: June 16, 2008

