



National Grain and Feed Association Arbitration Decision

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October 6, 2015

CASE NUMBER 2565, 2600 AND 2603

**PLAINTIFF: TOPFLIGHT GRAIN COOPERATIVE
MONTICELLO, IL**

**DEFENDANT: RJW WILLIAMS FARM INC.
CISCO, IL**

STATEMENT OF THE CASE

These cases involved ten hedge-to-arrive (HTA) contracts for a total of 735,000 bushels of corn and one HTA contract for 15,000 bushels of soybeans between the buyer, Topflight Grain Cooperative (Topflight), and the seller, RJW Williams Farm Inc. (RJW Williams). The first eight corn contracts (contracts numbered 16546, 16547, 16706, 16738, 36280, 16739, 16740, and 16783) provided for December 2010 delivery and were entered into between February 4, 2010 and May 3, 2010. The two corn contracts (contracts numbered 17191 and 17192) provided for December 2011 delivery and were entered into on August 5, 2010. The soybean contract (contract number 17880) provided for November 2011 delivery and was entered into on November 8, 2010.

The first eight corn contracts were rolled from December 2010 delivery to March 2011 delivery on November 23, 2010, and then rolled again to May 2011 delivery on February 23, 2011. On March 4, 2011, six of those eight contracts (numbers 16456, 16547, 16706, 16739, 16740 and 16783) (now referred to as “the six contracts”) were rolled to December 2011 delivery after Topflight visited RJW Williams and was made aware that RJW Williams would be short the 435,000 bushels under the six contracts. From that meeting Topflight was also made aware that RJW Williams intended to deliver against contracts 16738 and 36280, which were priced on March 4, 2011.

On April 26, 2011, RJW Williams was notified by Topflight about nonperformance on the HTA contract 16738 (and the priced contract 36280) scheduled for delivery or pricing by April 29, 2011. Topflight, again, on or about April 28, 2011, notified RJW Williams through its attorney about nonperformance on the contracts. On April 29, 2011, RJW Williams’ attorney and Jim Williams himself responded that RJW Williams intended to perform on the contracts and requested an extension to May 6, 2011, which was agreed to by Topflight. On May 8, 2011, Topflight cancelled contracts 16738 and 36280 due to RJW Williams’ nonperformance and Topflight promptly filed for arbitration with NGFA.

On August 30, 2011, and again on September 12, 2011, Topflight notified RJW Williams through its attorney about its December 2011 corn and November 2011 soybean obligations. Topflight also notified RJW Williams on all eight corn contracts (numbers 16456, 16547, 16706, 16739, 16740, 16783, 17191, and 17192) that basis needed to be set by November 29, 2011, and delivery needed to occur by December 30, 2011. Topflight further notified RJW Williams that the soybean contract numbered 17880 needed to be priced by October 28, 2011 and delivered by November 30, 2011. Topflight cancelled the soybean contract on October 28, 2011, after RJW Williams failed to set the basis. Topflight then filed for arbitration on the soybean contract.

Topflight on October 7, 2011, sent a reminder notification to RJW Williams through its attorney that the eight corn contracts needed to be priced by November 29, 2011, or Topflight would cancel all eight corn contracts. RJW Williams' attorney throughout this entire process had assured Topflight that RJW Williams would fulfill its obligations. One last letter was sent to RJW Williams' attorney on November 28, 2011, to which the attorney responded stating that his client would honor all open contracts set for delivery by December 31, 2011. However, Topflight was notified the following day (November 29) that RJW Williams would not set the basis on any of the eight contracts. Topflight then cancelled all eight corn contracts on November 29, 2011, and promptly filed for arbitration.

Topflight in all three arbitration cases – 2565, 2600 and 2603 – claimed that all 11 contracts in dispute were valid pursuant to NGFA Grain Trade Rule 3(A). Written confirmations were timely sent out by Topflight and signed by RJW Williams. Topflight obtained signatures on behalf of RJW Williams for “the six contracts”, as well as for the other two contracts for December 2011 delivery, the two contracts for May 2011 delivery and the soybean contract. RJW Williams also signed personal guarantees for “the six contracts.” Topflight also stated each of the 11 contracts was properly cancelled under NGFA Grain Trade Rule 28(A) and that the market difference was properly calculated. Topflight further argued that the arbitration case was timely submitted to NGFA.

RJW Williams claimed it was not mailed any contract confirmations and had not seen any documentation that supported a contract was entered into and signed on the days, which Topflight stated they were agreed upon, in violation of Grain Trade Rule 3(A). Further, RJW Williams claimed the “original” contracts were never filed with NGFA for arbitration and that no “true” copies have been made available. RJW Williams argued the case should be dismissed on these grounds. RJW Williams also claimed that the signatures Topflight had on “the six contracts” and personal guarantees were forgeries and that the affidavits from Topflight were unlawful. RJW Williams further claimed that Topflight should have acted sooner to mitigate damages upon notification of default. RJW Williams argued the ten corn contracts were unenforceable under the Illinois Statutes of Fraud and the Uniform Commercial Code claiming that the contracts and crop year summaries were not sent within a “reasonable” amount of time. RJW Williams also claimed it had not been credited for 83,442.57 bushels delivered against corn contract 36280 to the location specified in the contract. RJW Williams further argued that NGFA was barred under the law from entering an award in favor of Topflight due to the range and nature of the multiple disputes between Topflight and RJW Williams, and prior rulings by the Illinois State Circuit court in some of these disputes.

THE DECISION

The arbitrators concluded that all 11 contracts between Topflight and RJW Williams were valid. Topflight acquired signatures from RJW Williams on the final roll of “the six contracts,” which the arbitrators agreed validated the initial contracts and the subsequent rolls, thereby satisfying NGFA Grain Trade Rule 3(A). To further satisfy NGFA Grain Trade Rule 3(A), Topflight also obtained signatures from RJW Williams on the revised contracts showing the new delivery date of December 2011. Topflight further obtained signed personal guarantees for “the six contracts” directly from Jim Williams, Robert Williams and Pam Williams, who were identified in their affidavits as agents of RJW Williams. Topflight presented signatures from RJW Williams on the two corn contracts for December 2011 delivery, the two corn contracts for May 2011 delivery and the soybean contract.

The claim by RJW Williams that it had never been provided any documentation that the contracts were entered into on the original dates would have held some merit with the arbitrators had Topflight not obtained any signatures on these documents. Because the signatures on behalf of RJW Williams were plainly evident on the final roll documents, revised contracts and personal guarantees for “the six contracts,” as well as on the other five contracts in dispute, the arbitrators ruled in favor of Topflight on this question.

RJW Williams argued that Topflight’s claims should be dismissed because it failed to submit the “original” contracts in dispute between the parties. The NGFA Arbitration Rules do not currently contain references to the filing of “original” papers. The arbitrators noted that Section 6(a) of the former version of the rules stated that, “a party will be expected to furnish: ... (2) The contract or contracts, if any, including all written evidence, letters, and telegrams, tending to establish the terms and conditions (or photostatic or verified copies thereof).” Section 6(d) also stated, “When the original papers concerning the case cannot be supplied and copies are substituted, a statement should be made under oath that the original papers have been lost or are beyond the control of the party offering copies as evidence and that the copies, so offered, are true copies.” In the current version of the NGFA Arbitration Rules, however, there are no references or conditions related to the filing of “original” papers. Specifically, Rule 3(A) in the current rules is the provision that most closely resembles the old Section 6. Rule 3(A) simply states that a party is to submit, “The contract(s), if any, including all written evidence, letters, communications, and other supporting documents” without any mention of “original” papers.

The arbitrators noted that to the extent the terms of the old rule would govern in this case, the wording of that provision is “a party will be expected to furnish ...” and when “copies are substituted, a statement should be made ...” The arbitrators determined that these are not terms that mandate a final specific result so as to require, for example, that a party’s claims be dismissed outright without a decision on the merits even if it can be established that the party failed to comply with the rule. The consequences to a party’s position for an alleged failure to comply with these provisions are for the arbitrators to determine on a case-by-case basis given the individual circumstances at hand. In this case, the parties discussed how the inspection of “original” papers might occur. It was not unreasonable for either party to refrain from submitting original documents to each other. The arbitrators rejected the argument that the claims in this case be dismissed on this basis alone.

RJW Williams stated that Topflight should have acted sooner on settling the contracts in order to mitigate damages. It appears to the arbitrators that this issue was addressed on March 4, 2011, by rolling “the six contracts” to the new crop of 2011, and then actually pricing contract 36280 for April delivery that same day. NGFA Grain Trade Rule 28(C)(3) states that “if the seller finds that he will not be able to complete a contract” initial contact may be verbal but it must be “confirmed in writing.” The arbitrators found no evidence of anything in writing by RJW Williams to support its claims. In addition, the values at the time Topflight did buy in futures to offset the contracts were less than the values on the days RJW Williams claimed the topic was discussed. The timing of the pricing was consequently to the benefit of RJW Williams.

RJW Williams had some minor issues regarding some of the affidavits originally presented by Topflight in this case. However, Topflight subsequently addressed and resolved those questions. RJW Williams presented various other allegations and arguments – forgery, violation of the Uniform Commercial Code as adopted in the state of Illinois and that a ruling in favor of Topflight was prevented based upon prior actions in the courts. The arbitrators determined, however, that RJW Williams’ arguments were not corroborated or substantiated so as to persuade the arbitrators to rule against the facts presented in this case and the weight of the evidence. The arbitrators also concluded that Topflight correctly calculated damages and timely filed for arbitration.

As for the 83,442.57 bushels that RJW Williams delivered under contract 36280, the arbitrators agreed that those bushels belonged to RJW Williams based upon the sworn affidavits it presented. These bushels are to be applied to contract 36280. RJW Williams is also entitled to interest to start to accrue as of May 1, 2011 (based upon the dates of delivery of those bushels).

THE AWARD

The arbitrators awarded to Topflight the amount of \$1,883,780.29 for cancellation of the contracts in these cases. The arbitrators awarded to Topflight arbitration fees of \$9,745.01 for the corn contracts in Case Nos. 2565 and 2603. The arbitrators also awarded interest at the rate 3.25% per annum (pursuant to NGFA Arbitration Rule 6(F)) to accrue from November 30, 2011 for claims under contracts 16456, 16547, 16706, 16739, 16740, 16783, 17191 and 17192, and to accrue from May 9, 2011 for claims under contracts 16738 and 36280, until payment is made to Topflight.

The arbitrators declined to award to Topflight pre-judgment interest or arbitration fees for its claims under soybean contract 17880 given that RJW Williams had offered to pay the cancellation charge prior to Topflight filing for arbitration.

The arbitrators awarded to RJW Williams the amount of \$324,800.20 for the bushels delivered under contract 36280. The arbitrators also awarded interest to RJW Williams on this amount at the rate of 3.25% (pursuant to NGFA Arbitration Rule 6(F)) to accrue from May 1, 2011 through April 1, 2015.

The calculations for the arbitrators' award to Topflight (including the amounts for which RJW Williams is to be credited) are further explained below:

Damages due to Topflight									
Confirmation No.	Case No.	Commodity	Bushels	Interest Start Date	Contract Price	Market Price	Market Difference	Cancellation Fee	Amount Owed
16738	2565	Corn	100,000	5/9/2011	\$ 3.9925	\$ 6.8650	\$ 2.8725	\$ 0.05	\$ 292,250.00
36280	2565	Corn	16,557	5/9/2011	\$ 3.8925	\$ 6.9600	\$ 3.0675	\$ 0.05	\$ 51,617.79
17880	2600	Soybeans	15,000	No Interest	\$12.2800	\$12.165	-\$0.115	\$ 0.15	\$ 525.00
16456	2603	Corn	35,000	11/30/2011	\$ 3.1525	\$ 5.9850	\$ 2.8325	\$ 0.10	\$ 102,637.50
16547	2603	Corn	50,000	11/30/2011	\$ 3.3275	\$ 5.9850	\$ 2.6575	\$ 0.10	\$ 137,875.00
16706	2603	Corn	100,000	11/30/2011	\$ 2.7175	\$ 5.9850	\$ 3.2675	\$ 0.10	\$ 336,750.00
16739	2603	Corn	100,000	11/30/2011	\$ 2.6825	\$ 5.9850	\$ 3.3025	\$ 0.10	\$ 340,250.00
16740	2603	Corn	100,000	11/30/2011	\$ 2.7825	\$ 5.9850	\$ 3.2025	\$ 0.10	\$ 330,250.00
16783	2603	Corn	50,000	11/30/2011	\$ 3.0025	\$ 5.9850	\$ 2.9825	\$ 0.10	\$ 154,125.00
17191	2603	Corn	50,000	11/30/2011	\$ 4.6050	\$ 5.9850	\$ 1.3800	\$ 0.10	\$ 74,000.00
17192	2603	Corn	50,000	11/30/2011	\$ 4.8150	\$ 5.9850	\$ 1.1700	\$ 0.10	\$ 63,500.00
								Subtotal	\$1,883,780.29
								Arbitration Fees (Cases 2656, 2603)	\$ 9,745.01
								Total	\$ 1,893,525.30

Damages due to RJW Williams						
Confirmation No.	Case No.	Commodity	Bushels Delivered	Interest Start Date	Contract Price	Amount Owed
36280	2565	Corn	83,442.57	5/1/2011	\$ 3.8925	\$324,800.20

Based upon these calculations, the arbitrators decided that the award payable to Topflight from RJW Williams was as follows:

Contract cancellation damages due to Topflight for all claims in Arbitration Case Nos. 2565, 2600 and 2603	→	\$ 1,883,780.29
Arbitration fees for claims in Case Nos. 2565 and 2603	→ (+) \$	9,745.01
Interest at 3.25% (May 9, 2011 – April 1, 2015) on \$343,867.79 in damages for contracts 16738 and 36280 in Case No. 2565	→ (+) \$	43,600.54
Interest at 3.25% (Nov. 30, 2011 – April 1, 2015) on \$1,539,387.50 in damages for the eight corn contracts in Case No.2603	→ (+) \$	167,086.79
Amount due to RJW Williams under contract 36280	→ (-) \$	324,800.20
Interest on that amount due under contract 36280 at 3.25% (May 1, 2011 – April 1, 2015)	→ (-) \$	41,414.26
<u>Total Amount Due to Topflight as of April 1, 2015</u>	→ (=) \$	<u>1,737,998.17</u>

The arbitrators further ordered that interest continue to accumulate at the rate of 3.25% per annum on this award from April 1, 2015 until the judgment is paid.

Decided: April 7, 2015

Submitted with the unanimous consent of the arbitrators, whose names appear below:

Robert Geers, Chair
Grain Merchant
Michigan Agricultural
Commodities
Lansing, MI

James Johnson
Grain Merchandiser
Crystal Valley Co-op
Hope, MN

Dean Isaacson
Manager
Western Consolidated
Cooperative
Holloway, MN