



National Grain and Feed Association Arbitration Decision

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July 10, 2015

CASE NUMBER 2699

PLAINTIFF: ORGANIC FEED & SEED, LLC, TUALATIN, OR

DEFENDANT: CARGILL ANIMAL NUTRITION, FERNDALE, WA

STATEMENT OF THE CASE

Organic Feed & Seed, LLC (OFS) asserted in this dispute that Cargill Animal Nutrition (Cargill) breached a sales contract for soybean meal (SBM) agreed upon by the parties in December 2011 (contract number 007395).

Prior to the contract in this dispute, OFS had completed several other purchases of SBM from Cargill from 2008 through 2011. The parties had also previously exchanged emails on various occasions regarding analyses performed on the SBM purchased in those earlier transactions. Extensive contractual and other documentation was presented by the parties in this case. The arbitrators concluded that contract 007395 was the determinative document in this dispute.

OFS and Cargill agreed to and signed contract 007395, dated December 16, 2011, which specifically provided for Cargill to supply 540 tons of “organic soybean meal” at 60 tons per month over a nine-month period from January to September 2012. OFS claimed that the parties also had a verbal agreement that provided assurances the SBM sold under this contract would be from organic soybeans crushed in the U.S. and have the same “fed numbers” for protein and fat as the SBM delivered under the previous contracts between the parties.

Delivery of SBM commenced in January 2012 as provided under contract 007395. In late March 2012, Cargill shorted a delivery of SBM to OFS by 10 tons. Cargill contacted OFS to notify it that U.S. organic beans were not available, but that Cargill was able to supply SBM from foreign organic soybeans that were crushed in the U.S. OFS agreed to proceed with the contract under these conditions. On April 16, 2012, Cargill completed another delivery of SBM to OFS. Cargill also informed OFS on that date that the only available SBM was from foreign soybeans that were crushed off-shore. OFS agreed to proceed with the contract under these conditions.

OFS claimed in May 2012, it noted a significant decline in bird weights compared to its earlier flocks and evidence of cannibalism among the birds in the current flock. OFS stated it compared samples it had retained of SBM received from Cargill both before and after April 16, 2012. According to OFS, the SBM that was foreign crushed had a burnt smell and taste that was not found in any prior deliveries of SBM. OFS stated it then had independent lab testing performed on SBM delivered on May 11, 2012. The results of that testing according to OFS showed an *as fed* protein level of 40% and an *as fed* fat level of 3.2%. On May 25, 2012, OFS requested by email from Cargill a more legible copy of contract

007395 and confirmation of analysis of the SBM to include amino acid levels. OFS claimed Cargill responded by email on the same date providing a scanned copy of the contract and stating, “The as fed numbers at our plant, and in my nutrition program, has the CP (crude protein) at 46.18% and fat at 9.5%. This is higher than the test I took in 2009.” OFS subsequently amended its nutrition program to address the quality condition of the SBM currently being delivered by Cargill.

OFS asserted that Cargill breached contract 007395 in various respects: 1) Cargill breached an implied warranty that the SBM would be of marketable quality and fit for its ordinary purpose, i.e. use as feed in rations fed to organic chickens and organic dairy cows; 2) Cargill breached an implied warranty that the SBM would be fit for its particular purpose; namely, as the primary protein and fat source in feed rations for organic chickens and organic dairy cows; and 3) Cargill breached an express warranty that the SBM would meet minimum protein and fat levels as required by OFS. In sum, OFS argued that Cargill breached contract 007395 by not supplying a guaranteed quality of organic domestic SBM. According to OFS, the SBM that was crushed off-shore and delivered in April and May 2012 had levels of protein and fat lower than the guaranteed levels. OFS also argued this SBM was of inferior quality in that it was malodorous and unpalatable. OFS claimed Cargill’s breach of contract caused losses in reduced bird weights, increased feed costs, lost bird sales, and losses related to OFS’s dairy cattle. OFS claimed \$386,661.51 in damages.

Cargill responded arguing it had made no guarantees related to quality. Cargill referred to the absence of any written documentation supporting OFS’s claim that a quality guarantee was made. Cargill also argued OFS waived its claims by failing to inspect reject the SBM in a timely manner. Cargill stated OFS never gave notice of the allegedly non-conforming SBM, which would have allowed Cargill opportunity to investigate and potentially resolve OFS’s concerns. Cargill contested OFS’s breach of warranty claims and OFS’s causation and damages arguments. In support of its arguments, Cargill referred to OFS’s continued acceptance of delivery of SBM from Cargill. Cargill further argued OFS miscalculated its alleged damages at \$509,312.81 at the outset of the case, which resulted in Cargill paying a higher arbitration services fee. Cargill claimed it was entitled to recover its various costs associated with this matter.

THE DECISION

The arbitrators determined that the NGFA Trade Rules applied to this case. Contract 007395 specifically stated above the signature lines: “NGFA GRAIN TRADE RULES AND ARBITRATION RULES TO APPLY.” Also, under “TERMS” the contract stated as follows:

NGFA Trade Rules to Apply

Except as otherwise expressly provided herein, this contract shall be subject to the National Grain and Feed Association’s Trade Rules applicable on the date this contract is entered into. ...

Applicable Law

The contract shall be governed by, and construed in accordance with, the laws of the state in which it is entered into if a matter not addressed by the NGFA’s Trade Rules or the Arbitration Rules is at issue. ...

Final and Complete Agreement

The contract shall represent the final, complete and exclusive statement of agreement between the parties and may not be modified, supplemented or waived, except in writing signed by both parties. ...

Therefore, the conclusions of the arbitrators were based upon several keys factors:

There were no guarantees or provisions in contract 007395 regarding quality. There were no exchanges between the parties in writing regarding quality guarantees or conditions for contract 007395. OFS agreed to and signed contract 007395 without offering any additional conditions or amendments to the contract. Nor did OFS offer its own alternative purchase contract to Cargill with conditions concerning quality.

NGFA Grain Trade Rules 1 and 3 applied in this context in particular. Grain Trade Rule 1 states that buyers and sellers of grain shall include “quality” specifications in their contracts “if applicable.” Grain Trade Rule 3 provides for the confirmation of contracts whereby buyers and sellers are to exchange contract specifications in writing, then carefully check each other’s specifications, and provide immediate notice of any discrepancies. Rule 3 also states one party’s confirmation is binding upon the other absent immediate notice of any discrepancies.

In this case, OFS failed to send a contract of its own or provide notice of any discrepancies with Cargill’s contract. Indeed, OFS signed Cargill’s sales contract without any conditions or amendments. Therefore, the Cargill contract was binding. Contract 007395 did not include any specifications or conditions on quality for the organic SBM sold. Therefore, there was no breach by Cargill of this contract.

OFS also failed to notify Cargill at the time it received the SBM at issue, or any reasonable time thereafter, of the alleged issues. Cargill consequently had no opportunity to cure or address those issues. NGFA Grain Trade Rule 13 states a buyer must notify the seller no later than 12 noon of the next business day from when the grain arrives of any problems with the condition of the grain, and that failure to so notify will result in waiver of the buyer’s rights. Although Rule 13 specifically applies to the arrival of grain by railcar and as OFS contends the delivery of the SBM in this case was by truck, Rule 13 is nonetheless instructive on the concept of timely notice of issues with grain when received. Common sense also indicates a buyer would immediately notify the seller of quality concerns such as those claimed in this case. Regarding a potential connection between the quality of the SBM at issue and OFS’s claims for damages and financial losses arising from the negative impacts upon its bird and cow production and health – OFS failed to alert Cargill of its concerns nor did OFS allow Cargill the opportunity to cure or address those issues. To the contrary, OFS continued to accept SBM from Cargill, even after OFS had identified its stated concerns related to quality.

The arbitrators recommend that OFS and Cargill ensure subsequent contracts between them include any desired specifications to avoid similar issues in the future. The arbitrators noted it is a common industry practice for similarly-situated parties to include and agree to specifications in commodity contracts such as those involved in this dispute. The arbitrators determined that Cargill may have ultimately supplied OFS with SBM that was below OFS’s expectations and of inferior quality – but without the relevant contract terms, and evidence related to proper notification and verifiable losses – the arbitrators were unable to award damages to OFS.

Nor was Cargill entitled to any costs associated with this case.

THE AWARD

The arbitrators declined to award damages to either party in this case.

Decided: May 13, 2015

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Jennifer Hanson, *Chair*
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