



National Grain and Feed Association Arbitration Decision

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August 23, 2016

CASE NUMBER 2756

**PLAINTIFF: INDY FAMILY FARMS
GREENWOOD, IN**

**DEFENDANT: GAVILON GRAIN, LLC
RUSHVILLE, IN**

STATEMENT OF THE CASE

The plaintiff, Indy Family Farms (IFF), and the defendant, Gavilon Grain, LLC (Gavilon), entered into contract PS9014475, dated January 3, 2014, for the purchase of 100,000 bushels of non-GMO soybeans. The delivery terms were “FOB Farm/Buyers Call VIA Truck” with shipment to occur between January 1 and March 31, 2015. IFF signed this contract on January 9, 2014, and returned it to Gavilon.

The parties also entered into contract PS9015143, dated January 27, 2014, for an additional 100,000 bushels of non-GMO soybeans. Delivery terms under the contract were “FOB Farm Greenwood VIA Truck” with shipment to occur between January 1 and March 31, 2015. IFF signed this contract on January 29, 2014, and returned it to Gavilon.

Neither of the original contracts established a price. Both contracts provided a \$1.40 non-GMO “premium to basis” and that basis was to be set prior to shipment. The futures prices were set for both contracts between April 11, 2014 and February 9, 2015.

On January 23, 2015, Gavilon and IFF corresponded by email regarding two options for setting of the basis on the contracts. The basis under one option providing for delivery of the grain by IFF from the farm to the terminal at Madison was +\$.07. The basis under a second option providing for pickup of the grain by Gavilon at the farm was -\$.31 (\$.07 less \$.38 for freight costs). Gavilon’s email to IFF specifically explained, as an example, how the basis would be calculated on contract PS9014475 if IFF delivered the bushels from the farm to the terminal at Madison under the first option ($\$12.1925 + .07 + 1.4 = \13.6625); and then how the basis would be calculated if Gavilon picked up the bushels at the farm under the second option ($\$12.1925 + .07 - .38 + 1.4 = \13.2825). On February 9, 2015, the basis was set for both contracts at -\$.31 (\$.07 less \$.38 for freight costs).

According to Gavilon, it hired truckers and paid to haul the beans to Madison. Because IFF did not deliver the grain to Madison, Gavilon deducted a freight adjustment from the basis of \$.38 for transportation costs.

IFF claims that Gavilon is responsible for the delivery costs for both contracts from farm to terminal. IFF stated that it understood because the contracts indicated “FOB Farm via Truck” that IFF would not be responsible for the freight costs. IFF stated it was not aware until it received settlement and payment from Gavilon that delivery charges were deducted from the proceeds through a change in the calculations of the basis. IFF stated it had not previously experienced transportation costs being a part of basis. IFF claimed damages of \$76,000 (representing 38-cents per bushel for the 200,000 bushels) as the transportation costs which were deducted in the settlement.

Gavilon argues that the freight from farm to terminal is IFF’s responsibility. Gavilon claims this dispute is the result of a misunderstanding by IFF of how the basis value was established. According to Gavilon, the contract terms included a “premium to basis,” which required a basis to be set prior to shipment. The basis fixed shortly before shipment under these contracts was -\$0.31. Because of the \$1.40 premium the payment for basis to IFF for the bushels under the contracts was consequently \$1.09 above the applicable fixed soybean price. Gavilon argues it paid IFF the correct amounts.

THE DECISION

The arbitrators noted that the contracts did not establish a basis. The contracts only set the premium for non-GMO soybeans. The arbitrators noted that IFF expressed a potential concern about payment for freight costs in the January 23, 2015 email exchange but there was no evidence or other indication that IFF followed up on any such concern. The arbitrators agreed that it appears IFF may not have fully understood that when the basis was established, IFF would not receive a terminal (Madison) price without paying the freight to get it there. Gavilon informed IFF by email specifically presenting the different options to establish basis, either including a freight deduction or offering a higher price for delivery to the terminal in Madison.

IFF was quoted two basis prices: one that included delivery to Madison (\$.07) and one that was FOB the farm (-\$.31). When Gavilon picked up bushels at the farm, the freight costs to deliver the bushels to Madison were paid by Gavilon and IFF was paid based upon the FOB the farm basis (-\$0.31). The arbitrators concluded that IFF was paid a premium to deliver under both contracts to Madison. Gavilon was correct in its basis calculation that included the freight to deliver to the terminal and IFF subsequently received a proper settlement.

THE AWARD

No damages are awarded in this case.

Decided: July 26, 2016

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

Bill Ahlbrecht, Chair
Assistant General Manager
Ag Partners Coop
Goodhue, MN

Brentt Roberts
Grain Merchant
United Grain Corporation
Vancouver, WA

Britt Shipley
Grain Merchandiser &
Fertilizer Procurement
CoMark Grain Marketing LLC
Cheney, KS