



# National Grain and Feed Association Arbitration Decision

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October 24, 2016

## CASE NUMBER 2767

**PLAINTIFF: FARMERS AG & GRAIN SUPPLY INC.  
DEERFIELD, MO**

**DEFENDANT: BARTLETT GRAIN COMPANY, L.P.  
KANSAS CITY, KS**

### STATEMENT OF THE CASE

This case concerns three contracts for the sale by Farmers Ag & Grain Supply Inc. (Farmers Ag) of No. 2 Soft Winter Wheat to Bartlett Grain Company, L.P. (Bartlett) for delivery between June 15 and July 30, 2015. Each of the contracts provided for either “FOB Deerfield, MO” or “Delivered Bartlett KC Elevators.” The contracts involved in this case were contract no. 140323 for 20,000 bushels priced at \$6.06 per bushel; contract no. 136687 for 2,000 bushels priced at \$5.34 per bushel; and contract no. 130434 for 20,000 bushels priced at \$5.00 per bushel.

The relevant contracts and amendments also provided for “Maximum 2.0 ppm vomitoxin” and “Destination Scale of Discounts to apply at time of delivery.” Farmers Ag argues that any loads with vomitoxin levels higher than 2.0 ppm should have been rejected. Bartlett argues that its contractual obligations were met when the scale of discounts was applied to such loads.

The arbitrators determined that the sequence of events leading up to this dispute are as follows:

- On February 5, 2015, the parties entered into contract 130434 for 20,000 bushels (“FOB Deerfield, MO”).
- On May 18, 2015, the parties entered into contract 136687 for 2,000 bushels (“Delivered Bartlett KC Elevators”).
- On June 29, 2015, contract 130434 was amended to provide for delivery to “Bartlett KC Elevators.”
- On June 30, 2015, the parties entered into contract 140323 for 20,000 bushels (“Delivered Bartlett KC Elevators”).
- Loads were received at Bartlett’s Kansas City grain elevators between June 23, 2015 and July 17, 2015.
- Numerous loads exceeded levels 2.0 ppm vomitoxin.
- Neither party submitted evidence that Bartlett notified Farmers Ag that the loads had exceeded the maximum 2.0 ppm vomitoxin level stated on the contracts.

Farmers Ag claims that it requested to Bartlett to “run bad wheat off before unloading.” Farmers Ag states that it was under the assumption that the wheat delivered was within the specified limits of the contract after receiving the initial grades from Bartlett. Farmers Ag seeks \$50,000 in damages. Farmers Ag later requested in its rebuttal argument that it be allowed to retrieve any “unmerchantable” wheat that

was delivered after June 29, 2015, and re-deliver that wheat in the 2016 crop year harvest at the existing 2015 contract prices, stating that this had been allowed in previous years for other commodities.

Bartlett argues that it is unaware of communications in which Farmers Ag claims it stated to Bartlett to “run bad wheat off before unloading.” Bartlett states that when wheat was received that did not meet contract specifications it applied the destination scale of discounts as specifically provided on the contracts. Bartlett argues that it, therefore, should have no financial liability for accepting grain that did not meet contract specifications. Bartlett also argues that Farmers Ag has failed to show how it arrived at its claimed damages of \$50,000.

### THE DECISION

After extensive review of the parties’ arguments and evidence, the arbitrators reached the following conclusions:

- Farmers Ag provided no documentation or other support for its claim that it discussed with anyone at Bartlett concerning rejecting loads that were “bad.”
- Bartlett acted properly and in accordance with the contract terms and standard trade practices by accepting the grain that did not meet contract specifications and applying the destination scale of discounts as provided in the contracts.
- Farmers Ag did not document or otherwise show how it calculated the claimed damages amount of \$50,000.
- Farmers Ag is not entitled to any award.
- Bartlett should have no financial liability for accepting the grain and applying the discounts in accordance with the contracts.
- Farmers Ag’s request to retrieve the “unmerchantable” grain and re-deliver it in a future crop year was not made until the filing of Farmers Ag’s rebuttal argument in this case, which was long after the grain had already been accepted and paid for by Bartlett. The request was too late by that time.

Bartlett also requests reimbursement of \$750 from Farmers Ag for Bartlett’s share of the arbitration service fee. Traditionally, NGFA Arbitration has followed the principle whereby each party is expected to pay its own expenses. The arbitrators find no exceptional circumstances present and does not conclude that Farmers Ag’s claims in this case were frivolous. The arbitrators, therefore, denied Bartlett’s request for reimbursement of fees.

### THE AWARD

No damages are awarded in this case.

Decided: September 26, 2016

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

**Rango Springer**, *Chair*  
Merchandising Manager  
Stratford Grain Co.  
Stratford, TX

**Doug Balvin**  
General Manager  
Canby Farmers Grain Co.  
Canby, MN

**Lacey Seibert**  
Grain Originator  
Cooperative Producers Inc.  
Hastings, NE