



Arbitration Decision

National Grain and Feed Association

December 29, 1998



Arbitration Case Number 1950

Plaintiff: Jefferson Grain & Seed Inc., Terreton, Idaho

Defendant: ConAgra Grain Cos., a.k.a. Peavey Grain Co., Minneapolis, Minn.

Statement of the Case

This dispute involved a rail freight-related claim by Jefferson Grain & Seed Inc. (Jefferson), the plaintiff, against ConAgra Grain Cos. (ConAgra), the defendant, arising from deferred pricing contract(s) entered into in August 1996.

Under the contract(s), Jefferson agreed to sell a total of 825,000 bushels of soft white wheat to ConAgra for rail shipment from Idaho delivered to Chicago for shipment beyond. Jefferson contended that it reached an oral agreement with ConAgra to use an estimated freight rate of 85 cents per bushel, with the understanding that differences between the estimated and actual freight charges would be reconciled at the end of the shipment period. Jefferson sought damages of \$78,107.87 for the freight charges, plus accumulated interest.

Shipment occurred during a nine-month period starting in

September 1996. In early 1997, Jefferson began to price the contract. Shortly thereafter, the contractual terms were amended from "delivered Chicago" to "f.o.b. Idaho." Adjustments were made to the original contract terms by reducing the Chicago price by 85 cents per bushel to bring it back to "f.o.b. Idaho." Settlements were made by ConAgra on that basis. Jefferson claimed that its original oral agreement on freight differentials with ConAgra was confirmed in many subsequent discussions between the two parties. Thus, Jefferson used an estimated 85-cents-per-bushel rate from Idaho to Chicago for pricing purposes, and later adjusted its calculations to the actual price-per-bushel freight paid from Idaho to Chicago to determine the amount being claimed.

ConAgra denied there was ever such an agreement.

The Decision

Neither of the parties produced a written contractual document confirming the total 825,000-bushel shipment. ConAgra provided the arbitrators with a copy of ConAgra's "Confirmation of Purchase Contract" for an initial 82,500 bushels of U.S. No. 1 soft white wheat¹. This document contained the signatures of representatives of both parties. The delivery basis was written "DLV Chicago." There was no reference in the confirmation to a freight rate or an adjustment to freight rates. However, both parties concurred that their original agreement² for the total 825,00 bushels was based on "delivered Chicago" terms. Pricing on a total of 838,317 bushels was made on Jan. 22, 1997. ConAgra's documentation of this pricing was written "DLV CHGO."

Jefferson contended that on Feb. 21, 1997, the parties agreed to amend the terms from "delivered Chicago" to "f.o.b. Idaho." The then-existing rail freight rate of \$2,800 per car, containing a 3,300-bushel content (198,000 pounds), was used to establish an 85-cent-per-bushel freight factor to convert the price from "delivered Chicago" to "f.o.b. Idaho." ConAgra provided the arbitrators with an "Original Contract Amendment" dated Feb. 21, 1997, which was signed only by ConAgra's representative. This document stated under remarks: "FOB IDAHO NOT DLV CHICAGO."

Jefferson did not assert any argument in its submissions to the arbitrators that it had objected to the terms being changed

¹ Contract number P 49811.

² ConAgra referred to contract number P 49800 as covering the entire 825,000 bushels. While later amendments referred to this contract number, neither party provided the arbitrators with a copy of contract number P 49800.

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from Chicago to f.o.b. Idaho. Based upon the inclusion of one bill of lading submitted by ConAgra, it appeared that the rail freight bills were paid by Jefferson.

The original contract terms of "delivered Chicago" would have resulted in Jefferson being charged the actual freight paid upon settlement. Therefore, Jefferson would have received the compensation that it thought was due based upon the original terms. When the contract was changed to f.o.b. Idaho, the difference between the freight differential used for settlement and the freight charges actually paid to the railroad reverted to ConAgra.

Adequate documentation supporting the parties' differing positions was limited with respect to ConAgra and was virtually nonexistent with respect to Jefferson. Therefore, the arbitrators concluded that ConAgra's Feb. 21, 1997 contract amendment was the best evidence presented on the change of contract terms to "f.o.b. Idaho." The written documentation, combined with the lack of any evidence that Jefferson had protested, was the basis for the arbitrators' conclusion that the change from "delivered Chicago" to "f.o.b. Idaho" applied to all of the bushels sold by Jefferson to ConAgra.

Jefferson contended that "pricing was done with 85 cents per bushel deducted from the priced amounts." But ConAgra contended that "we converted to bushels using 3,300 to come up with the freight differential of 85 cents to bring it back to origin." These comments supported the conclusion that 85 cents per bushel was the correct deduction to be made at settlement to adjust from a delivered f.o.b. contract.

The central issue in this case was whether a verifiable contractual agreement existed to require an adjustment allowing Jefferson the difference between the actual freight paid on a per-bushel basis and the settlement factor of 85 cents per bushel. If so, this would generate a per-bushel freight advantage of loading more than 3,300 bushels (198,000 pounds) in a rail car that was billed on a per-car rate. ConAgra argued that the contracts were not written or amended at any time to guarantee it penalties or Jefferson premiums for cars loaded with more than 3,300 bushels.

NGFA Grain Trade Rule 1 provides that "it shall be the duty of both the Buyer and Seller, to include in their original articles of trade," a series of specifications which include "(j) Other terms."

In addition, NGFA Grain Trade Rule 6 provides, in pertinent part, the following: "(a) **Confirmation:** It shall be the duty of both Buyer and Seller, not later than the close of the business day following the date of trade, to send a written confirmation, each to the other (the Buyer a confirmation of purchase, and the Seller a confirmation of sale), setting forth the specifications as agreed upon in the original articles of trade...."

"(c) If either Buyer or Seller fails to send out confirmation, the confirmation sent out by the other party will be binding upon both in case of any dispute, unless confirming party has been immediately notified by nonconfirming party, as described in 6(a), of any disagreement with the confirmation received."

NGFA Grain Trade Rules 1 and 6 are designed to prevent misunderstandings and subsequent disputes from occurring. However, NGFA Grain Trade Rule 6 also provides specific guidance on resolving matters where parties later disagree on specific terms and which party should prevail if only one issues a confirmation. In this case, both parties could be faulted for lacking documentation. ConAgra provided a contract confirmation for at least a portion of the bushels applied, which made no reference to an adjustment based upon actual freight paid. Further, the "Terms and Conditions" section of ConAgra's confirmation, which the plaintiff signed, provided that "[t]his contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions of their agreement."

Jefferson failed to provide any confirmation of the transaction and provided no evidence of objecting to ConAgra's confirmation. Nevertheless, Jefferson asserted that its claim "should not be dismissed based on standard contracting." Yet, a "standard" contract confirmation containing the specific details of the alleged agreement on freight differentials could have provided the support necessary to change the outcome in this case.

The Award

The arbitrators concluded that the claims asserted by Jefferson Grain & Seed Inc., the plaintiff, should be denied in their entirety. Thus, the arbitrators found in favor of ConAgra Grain Cos., the defendant, with no damages awarded.

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

Steven L. Colthurst (*Chairman*)
Procurement Manager
Land O'Lakes Inc.
Seattle, Wash.

Darrell R. Wallace
Vice President and Manager
Transportation
Bunge Corp.
St. Louis, Mo.

Richard Thomas
Manager
Topflight Grain Cooperative
Bement, Ill.