



National Grain and Feed Association

# Arbitration Decision

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September 19, 2002

## Arbitration Case Number 2012

**Plaintiff:** Integrated Grain and Milling, Fresno, Calif.

**Defendant:** Ackerman-Beardsley-Bennett, Burlington, Vt.

### Statement of the Case

This case involved two corn germ meal contracts sold by Ackerman Beardsley-Bennett (Ackerman) to Integrated Grain and Milling (IGM).

The first contract (IGM #812100; Ackerman #1059) called for delivery of nine railcars (approximately 765 tons) of corn germ meal delivered via rail to Central California, one car per month, January-September 2000. The second contract (IGM #821190; Ackerman #1685) called for two railcars (approximately 170 tons) delivered via rail to Central California, April-September 2000.

On Aug. 30, 2001, IGM verbally notified Ackerman that IGM had failed to receive all the railcars of corn germ meal due to be delivered under the two contracts, and stated that IGM considered Ackerman to be out of contract. Ackerman requested the opportunity to review archived records before responding. Ackerman responded, stating that an employee of

Ackerman and an employee of IGM had agreed in November 2000 that the final car (NRLX 54188) had been shipped to IGM on that date. Ackerman maintained and justified its position that contracts were complete based upon contract applications, invoices paid in full and the behavior of IGM, which it said reflected no initiative on IGM's part to direct any more corn germ cars, dispute any contract applications or make further contact with Ackerman about the matter.

In its defense, IGM referenced NGFA Feed Trade Rule 19(A), which states, in relevant part: "*If the Seller fails to notify the Buyer of his default, the liability remains in force until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. The Buyer shall notify the Seller at once by telephone, facsimile, or wire and within twenty-four (24) hours thereafter, advise the Seller by telephone, facsimile, or wire which of the options (1) or (2) or (3) above he elects to exercise.*"<sup>1</sup>

### The Decision

The evidence presented in this case indicated there was confusion by both the buyer and seller because of the original misapplication of railcar NRLX #54188 to IGM contract #821190. A proper application should have been to apply NRLX #54188 to contract IGM contract #812100. Once this adjustment in railcar application was made, IGM's contract #821190 remained short one railcar. Ackerman claimed the second car applied to the contract was railcar UP83838 delivered to Central California. However, IGM showed that this railcar was properly applied to a previous IGM contract #807110, and had paid \$92 per ton for the shipment, not the \$84 per ton called for under IGM contract #821190.

Despite the confusion, the arbitration panel determined that

the balance of the evidence submitted by both parties indicated that IGM remained one car short against the contracts subject to this dispute. The panel found that IGM did adhere to NGFA Feed Rule 19(A) to reach settlement on the issue, since it properly notified the seller (Ackerman) when it discovered the default situation. The arbitrators agreed with the defendant that one car, UP 83838, originally was misapplied to a separate contract, not referenced in this dispute, but the plaintiff was able to show that it should have been properly applied to an older contract and not to #821190 as suggested by Ackerman. This left IGM contract #821190 with one car unshipped. The defendant also claimed the contract had been canceled, but no written confirmation was produced.

<sup>1</sup>The options referenced herein are found in an earlier portion of Feed Trade Rule 19(A), and are as follows: (1) agreeing to extend the shipping period; (2) buying-in for the Seller's account the defaulted portion of the shipments; or (3) canceling the defaulted portions of the shipments at fair market value based on the day the option is exercised.

## The Award

The plaintiff's claims were as follows:

\$4,390.26	Cancellation fee (market difference on 104.53 tons of corn germ meal)
\$339.07	Interest on claim
\$1,611.75	Management and attorney fees
(\$425.00)	Adjustment on misapplication of railcar
\$5,916.08	Total Claim

Based upon the findings, the Arbitration Committee denies the claim for management and attorney's fees and orders that Ackerman pay IGM the following as settlement of this dispute:

\$2,805.00	Cancellation fee (based upon Exhibit G provided by the defendant to establish market value, less the \$84-per-ton contract price, a difference of \$33 per ton on 85 tons)
(\$324.37)	Reapplication of car UP 83838 (64.875 tons) from contract #807100 at \$92 per ton to contract #802690 at \$97 per ton, leaving \$5 per ton owed defendant.
\$2,480.63	Market difference
\$148.84	6 percent interest from September 2001 until paid
<b>\$2,629.37</b>	<b>Total Award Due to Plaintiff</b>

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

**Warren LaRue**, *Chair*  
 Controller, Grain Department  
 Farmers Cooperative Co.  
 Farnhamville, Iowa

**Geoff Finch**  
 Ingredient Resource Manager  
 Wenger's Feed Mill Inc.  
 Rheems, Pa.

**Jim Mendlik**  
 Vice President of Operations  
 Hansen Mueller Co.  
 Omaha, Neb.