



National Grain and Feed Association

Arbitration Decision

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December 12, 2002

Arbitration Case Number 2013

Plaintiff: Pacific Tradewinds Inc., Othello, Wash.

Defendant: Peavey/ConAgra Grain Companies, Omaha, Neb.

Statement of the Case

This dispute involved the second of two contracts dated Dec. 15, 2000, for the sale of U.S. No. 2 yellow corn by Pacific Tradewinds Inc. ("PTW") to Peavey/ConAgra Grain Companies ("ConAgra").

In both contracts, the price was set at 52-cents-per-bushel over the March 2001 Chicago Board of Trade (CBOT) futures contract price, and the quantity was set at five rail cars per contract. Only the shipment periods were different between the two contracts. The second contract (PTW #10371, ConAgra #34409) specified shipment during the week of Dec. 18, 2000. Two rail cars were tendered on Dec. 27, and the remaining three cars were delivered on Dec. 28. The fact that shipment was beyond the period specified in the contract was not relevant to this dispute. Instead, the parties disputed the manner in which this contract was priced.

Two NGFA Grain Trade Rules were at issue in this case:

***“Rule 4. Alteration of Contract.** The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing.*

***“Rule 9. Unpriced Contracts.** Unless otherwise agreed, all unpriced contracts shall be priced within the day’s price range at Buyer’s option, while futures markets are open and tradable. In no case shall pricing go beyond the requested date of shipment, the date of actual shipment, or the day before the first notice day of the contract futures month involved, whichever comes first.”*

PTW stated that having not received a pricing order from ConAgra through the date of shipment, it “priced all five cars during the normal trading hours of the CBOT at a price of \$2.30/bu. on December 28, 2000.” PTW contended that Grain Trade Rule 9 required that the contract be priced on Dec. 28 as the date of actual shipment. PTW acknowledged that it did not notify ConAgra of the contract pricing. However, it maintained that because pricing was in accordance with Grain Trade Rule 9, it was not under any obligation to contact or arrange for pricing with ConAgra.

PTW sought damages amounting to \$2,764.12, plus interest (based upon the difference of 15.5 cents per bushel between the price on the shipment date of \$2.30 per bushel and the closing price on the first notice day of \$2.145 per bushel for 17,833.04 bushels).

ConAgra countered that PTW had a contractual obligation to provide notice of pricing on the date of shipment. While PTW disputed the application of Grain Trade Rule 4 in this situation, ConAgra asserted that this rule requires the consent of both buyer and seller to alter or amend specifications of a contract, and that contract pricing falls within this requirement. ConAgra also contended that PTW acted unilaterally in pricing the contract, and denied ConAgra its option to set the price as the buyer as required by Grain Trade Rule 9. ConAgra further claimed that after numerous attempts to reach a mutually agreeable price, it acted correctly under Grain Trade Rule 9 in notifying PTW of its intention to price the contract at the close of futures trading on Feb. 28, 2002, if pricing had not been established by mutual agreement.

The Decision

The arbitrators found that PTW violated both NGFA Grain Trade Rules 4 and 9.

Grain Trade Rule 9 provides an option to both the buyer and the seller to require pricing according to the specified time requirements. In providing the option to the buyer of selecting the level of pricing during the trading day, Grain Trade Rule 9 establishes a protocol for setting the price within the specified day. This can occur only if the seller contacts the buyer to request pricing or if the buyer contacts the seller to arrange for a means of pricing. Either party can initiate pricing and request consent for pricing by notice to the other party of its desire to price the contract. PTW interpreted Grain Trade Rule 9 incorrectly by disregarding the term "buyer's option."

Further, Grain Trade Rule 9 does not permit either party to ignore the requirements of Grain Trade Rule 4. PTW violated Grain Trade Rule 4 by not involving ConAgra in the pricing of the contract. Its unilateral pricing of the contract consequently was invalid. Unless otherwise agreed, ConAgra, as the buyer, had the option under Grain Trade Rule 9 to determine the price within the trading range while the markets were open and tradable. PTW failed to obtain a mutually agreeable price as required by Grain Trade Rule 9. ConAgra attempted on

numerous occasions to price this contract, but PTW would not consider a different price.

Therefore, the arbitrators found that ConAgra provided proper notification to PTW, and appropriately priced the contract on the last date specified for pricing under Rule 9.

The Award

PTW's claim is denied with no damages awarded.

Submitted with the unanimous consent of the arbitrators, whose names appear below:

James W. Blackwell, *Chairman*
Director of Commodities
Foster Farms Commodities Division
Fresno, Calif.

Roger Caffrey
Director of Grain Operations
MFA Inc.
Columbia, Mo.

Dan Treinen
Columbia Grain International Inc.
Great Falls, Mont.