



National Grain and Feed Association

# Arbitration Decision

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November 26, 2002

## Arbitration Case Number 2016

**Plaintiff:** **Murphy Grain Marketing Inc., Overland Park, Kan.**

**Defendant:** **The Andersons Inc., Maumee, Ohio**

### Statement of the Case

This case involved a contract dated Jan. 26, 2001 for the sale of oats by Murphy Grain Marketing Inc. (MGM) to The Andersons Inc. (Andersons).

The contract (MGM#13632/Andersons#84500) specified 225,000 bushels of U.S. No. 2 extra heavy white oats at 25-cents-per-bushel over the March 2001 Chicago Board of Trade (CBOT) futures contract price. Delivery was set for f.o.b. Marine Port Terminal, Brunswick, Ga., in buyer's trucks by Feb. 9, 2001. Harris-Crane Inc. (Harris), the broker, confirmed the terms of the contract (Harris#48949). Problems and conflicts subsequently arose during delivery on the contract, particularly related to the destination designated for delivery in Brunswick. An alternative destination was secured in Collins, Ga. However, delivery to Collins involved an added cost of 20-cents-per-bushel, amounting to an additional \$13,460.50 (67,302.50 bushels at 20-cents-per-bushel).

In this proceeding, MGM and Andersons disputed whether the contract had been amended to alter the delivery location and, therefore, which party was to bear the additional delivery expense. MGM contended that the contract was never amended and that Brunswick remained the designated destination. MGM maintained it never agreed to amend the contract or to incur the additional freight costs. MGM claimed, therefore, that the additional costs for transport to Collins were Andersons' responsibility. MGM sought recovery of this amount (\$13,460.50), which Andersons withheld from payment of the final invoice, plus interest.

Andersons countered that the parties amended the contract on Feb. 2, 2001, to reflect MGM's agreement to a reduction in the contract price of 20 cents per bushel for those bushels delivered to Collins. Andersons claimed that MGM specifically agreed to the amended destination and that MGM would

assume the additional cost. Andersons stated that it even secured the alternative destination at MGM's request so that delivery could continue once problems arose relating to the originally designated destination. According to Andersons, MGM remained in agreement with this amendment until subsequent events caused it to reconsider. Andersons asserted that MGM's alleged renegeing on the agreement occurred after it informed Andersons of its desire to cancel the contract on Feb. 6. Andersons responded that such cancellation of the contract by MGM would result in imposition of the cancellation fee of 10 cents per bushel, as provided in the contract. MGM then allegedly replied that it no longer would agree to the 20 cents per bushel reduction in the contract price. Andersons claimed it informed Harris of the amendment and Harris sent this amendment to MGM on Feb. 12, 2001.

Andersons also counter-claimed against MGM for \$250 in costs related to cancellation of delivery trucks on Feb. 7, 2001. Andersons disputed that MGM was owed anything, including any award of interest. In the event of an award by the arbitrators against it, however, Andersons submitted that any award of interest should run only from the date of the arbitration award because MGM waited almost a year before initiating this case.

### The Decision

The arbitrators reviewed all documents submitted by the parties. The arbitrators concluded that the parties agreed to the terms of the original contract and the dispute strictly involved whether there was an amendment to the original contract. There were several communications in the execution and performance of this contract – some of these were between the principals and some were through Harris as the broker.

The pertinent rule applicable to this case was NGFA Grain Trade Rule 4, which states as follows:

***“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.”***

The arbitrators concluded that the contract was f.o.b. Therefore, any price adjustments for trucking charges could only be agreed upon with an amendment to the contract. Andersons claimed such an amendment was agreed to on Feb. 2, but the arbitrators determined that a confirmation was not sent until Feb. 12. Harris never talked directly with MGM about this amendment; however, pursuant to Andersons’ instructions, Harris sent an amendment confirmation to MGM on Feb. 12. These communications cannot be considered “immediate” under Grain Trade Rule 4. As of Feb. 12, all shipments had been completed against this contract and the parties had agreed to a cancellation of a contract balance. There was no evidence that the amendment was at any time expressly consented to or confirmed in writing by MGM, as required under Grain Trade Rule 4. Therefore, the arbitrators determined that there was no agreed-to amendment to the original contract.

## **The Award**

The plaintiff’s claims represented the amount outstanding of \$13,460.50 (67,302.50 bushels at 20 cents per bushel). The plaintiff also sought interest.

Based upon the evidence presented, the arbitrators denied Andersons’ counterclaim and ordered that Andersons pay MGM \$13,460.50, plus interest, to resolve this dispute. The arbitrators awarded interest to MGM accruing at a rate of 8.5 percent from Feb. 26, 2001 until paid (representing the New York Prime interest rate as of Feb. 26, 2001 – the date MGM became entitled to receive payment).

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

**William Schieber, Chairman**

Export Manager  
Bartlett Grain Co.  
Kansas City, Mo.

**Frank Heindel**

Manager  
The Scoular Co.  
Charleston, S.C.

**Rick Cole**

Merchandising Manager  
General Mills Inc.  
Minneapolis, Minn.