

# National Grain and Feed Association

# Arbitration Decision

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July 10, 2003

## Arbitration Case Number 2026

**Plaintiff:** Sigco Sun Products Inc., Breckenridge, Minn.  
**Defendant:** South Dakota Wheat Growers Association, Roscoe, S. D.

### Statement of the Case

This case involved a dispute over the quantity of oil sunflowers traded between Sigco Sun Products Inc. ("Sigco") and South Dakota Wheat Growers Association ("SDWG").

By verbal agreement on or about April 4, 2002, Sigco purchased from SDWG oil sunflowers for delivery to Sigco's facility in Breckenridge, Minn. On April 26, SDWG began shipping the oil sunflowers to the Breckenridge facility. SDWG ended shipments on June 14. Sigco contended that SDWG underfilled on its contractual obligation and, consequently, owed damages for the replacement cost of those sunflowers not delivered. SDWG countered that it had satisfied its obligation. The dispute centered upon what quantity actually was agreed upon and obligated between the parties.

On April 8, 2002, Sigco sent a written purchase contract (Sigco Contract No. 21121001) to SDWG to confirm the trade. Upon receipt of this contract, SDWG telephoned Sigco and objected to numerous terms contained therein. Both parties agreed that several of the terms in the purchase contract did not reflect their initial verbal agreement. In particular, the parties agreed that the quantity, delivery specifications, discounts schedule and payment terms in the written contract required amending. Neither party followed up on this phone call with any written confirmation of the changes that were discussed.

The discussed amendments to the April 8 Purchase Contract are shown in the following chart.

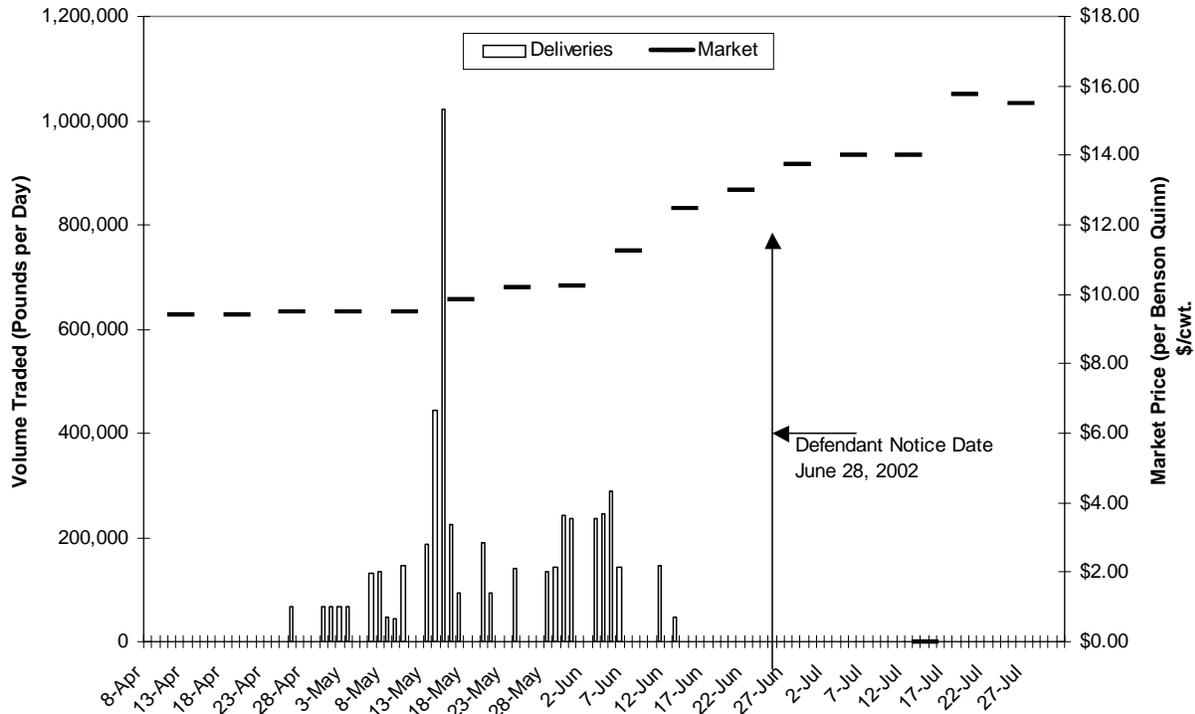
Based upon testimony from both parties, this trade originated from sunflowers stored on the 3B farm site in South

Contract Term	Purchase Contract	Discussed Amendment
Quantity	12 million-14 million pounds	Per Sigco: 10 million pounds Per SDWG: 5 million-7 million pounds (amount in bins deemed acceptable)
Payment	30 days	1 week
Discounts	Yes	None
Shipping	Buyer's Call	Max. 1 million pounds per week

Dakota. Sigco collected samples in December 2001 at the 3B farm site indicated as representative of the contents of each farm bin. Sigco then tested those samples for seed size and shared that information with SDWG, which was the originating handler for those sunflowers.

SDWG began shipping on April 26, 2002, at a rate of one load per day. After several days, Sigco prompted SDWG (with a 10 cent per hundredweight extra freight premium) to accelerate deliveries. SDWG subsequently increased deliveries to the point of taxing capacity at the Breckenridge facility. Sigco then requested that deliveries be slowed to match receiving capacity. On occasion, Sigco also requested that SDWG switch bins to increase the percentage of hulling grade seeds delivered. Sigco accommodated all shipments (5,134,703 pounds) and did not reject any loads. Sigco further instructed SDWG to ship 721,026 pounds to Grandin, N.D., against the contract. On June 26, Sigco tendered final payment for all shipments through June 14. In addition, Sigco delivered a \$25,000 check as prepayment for additional deliveries. However, no further shipments occurred, and SDWG returned the check to Sigco by mail on July 16, 2002.

### Timeline of Trade



## The Decision

The arbitrators reached a unanimous decision awarding damages to Sigco, but not for the total amount claimed by Sigco.

The arbitrators noted a significant lack of supporting documentation by either party regarding the exact terms of the agreement, and focused upon commonalities outlined in the parties’ affidavits. Based upon this evidence, the arbitrators concluded that both parties were aware of the quantity and quality of product available for the trade.

The arbitrators determined that the maximum quantity of qualifying seed known to both parties (see **Table A**) at the time of the verbal agreement constituted the amount of SDWG’s obligation to deliver. The agreement was priced and intended to apply to large seed, while discussion pertaining to remaining quantities of smaller seed was left open. SDWG cannot rely upon slow payment by Sigco as justification for non-performance, the arbitrators found, because SDWG did not provide proper notice to Sigco. The arbitrators concluded that evidence of non-performance by SDWG was apparent to Sigco on June 26, 2002, when Sigco made final payment for all deliveries through June 14. SDWG provided no assurances on that date that any additional deliveries would be forthcoming, despite acceptance of an advanced payment.

**Table A**

Bin #	Grade	Capacity	Pounds @28#
66	30	50,000 bu.	N/A
71	30	50,000 bu.	N/A
82	50	50,000 bu.	1,400,000
76	55	50,000 bu.	1,400,000
73	63	50,000 bu.	1,400,000
83	40 (50%)	50,000 bu.	700,000
77	67	50,000 bu.	1,400,000
Quonset	58	40,000 bu.	1,120,000
84	30 (50%)	50,000 bu.	700,000
<b>Totals</b>			<b>8,120,000 Gross</b>

Given that neither party likely knew exactly what quality was contained in each bin, the trade initially was based upon the information in **Table A**. While exact volumes and test weights were unknown at the time of the trade, SDWG made no effort to correct the quantity of “hulling grade” seed available to Sigco. Based upon the information in the parties’ affidavits, a “meeting of the minds” did occur with respect to the potential seed available that would likely apply to this trade. At most, it appeared that 6,720,000 pounds of “large” seed were available given the bins were at full capacity. SDWG agreed to ship 50 percent of bins 83 and 84, as well, bringing the total to 8,120,000 pounds.

SDWG shipped the following amounts:

Location	Gross	Dockage	Net
Breckenridge, MN	5,304,445	3.2%	5,134,703
Grandin, ND	744,861	3.2% (No detail)	721,026
<b>Total</b>	<b>6,049,306</b>		<b>5,855,729</b>
Available	8,120,000	3.2%	7,860,160
Underfill			2,004,431

## The Award

The arbitrators assigned June 26, 2002 as the effective date of non-performance, and determined to apply the buy-in price on or about that date. The arbitrators considered various alternatives upon which to calculate the applicable buy-in price:

1. The market price for country-run small seed was posted publicly at \$13.75 f.o.b. Dakota points. (Source: Benson Quinn, Minneapolis, Minn., closing market bids). An equivalent replacement price would include average freight from country points where seed was available of about 55 cents per hundredweight, plus the \$1 premium for hulling grade, amounting to a final buy-in price of \$15.30 per hundredweight delivered Breckenridge.
2. As submitted by Sigco, Pennington Seed Co.'s price of \$14.80 (delivery date associated with this bid was not indicated) plus the same premiums of \$1.55 amounted to a final buy-in price of \$16.35 per hundredweight delivered Breckenridge.
3. Also as submitted by Sigco, Commodity Marketing Co.'s price (\$16.25 bagged - ordinarily a \$2 premium to bulk country run) of \$14.25, plus the same premiums of \$1.55 for a total of \$15.80 per hundredweight delivered Breckenridge.

Because of the variance in daily posted prices for sunflower seeds, the committee determined to use an average of the three markets listed above – \$15.82 per hundredweight as the replacement or “buy-in” value applicable to this dispute.

$$\text{\$15.82/cwt. less \$11 (the contract price)} = \text{\$4.82/cwt.}$$

$$\text{\$4.82/cwt. x 2,004,431 pounds (the quantity deemed undelivered)} = \text{\$96,613.57}$$

Therefore, Sigco is awarded judgment in the amount of \$96,613.57, plus interest of 5 percent from June 26, 2002, until payment is made in full.

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

**Guy Christensen, Chair**  
Northern Sun/ADM Inc.  
Enderlin, N.D.

**Scott Dubbelde**  
Farmers Cooperative Elevator Co.  
Hanley Falls, Minn.

**Don Woodburn**  
AGP Grain Cooperative Inc.  
Omaha, Neb.