



National Grain and Feed Association

Arbitration Decision

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October 28, 2004

ARBITRATION CASE NUMBER 2037

Plaintiff: Lansing Grain Co., Overland Park, Kan.

Defendant: Fisher Farming Co., McDonald, Kan.

STATEMENT OF THE CASE

This dispute involved two contracts for the sale of wheat from Fisher Farming Co. ("Fisher") to Lansing Grain Co. ("Lansing").

On June 28, 2002, Fisher and Lansing entered into two, 25,000 bushel contracts (contract numbers K093875 and K093880), both of which specified "#1 HRW WHEAT" to be delivered "FOB MCDONALD" during Oct. 1-Oct. 31, 2002. Contract number K093875 was priced at \$3.15 per bushel, while contract number K093880 was priced at \$3.20 per bushel.

The parties did not dispute that Lansing loaded 13,533.84 bushels from Fisher's elevator under the contracts. The parties also did not dispute that on or about Oct. 21, 2002, Lansing advised Fisher that Lansing would be unable to complete pickup of the wheat by Oct. 31, 2002. The parties did not reach an agreement on a remedy of the situation at that time. On Nov. 1, 2002, Fisher refused trucks sent by Lansing to load further wheat under the contract.

In its arbitration claim, Lansing stated that it was holding payments that totaled \$41,930.46 due to Fisher for the 13,533.84 bushels that were picked up. Lansing sought \$54,178.56 for the balance of the remaining 36,446.91 bushels (11,466.16 bushels at \$1.52 per bushel, representing the difference between the cancellation price of \$4.67 and the contract price of \$3.15 per bushel; and 25,000 bushels at \$1.55, representing the difference between the cancellation price and the contract price of \$3.20 per bushel). Lansing also sought interest at 7 percent (APR) from Nov. 6, 2002; legal fees of \$5,953.52; and reimbursement of arbitration fees.

Fisher brought suit in state district court in Kansas. (Fisher Farming Co. v. Lansing Grain Co., Case No. 03-C-01 (Ct. Rawlins Co., KS). The court initially issued a temporary restraining order of the arbitration proceedings, but then quashed the restraining order and issued an order compelling the arbitration of this case pursuant to the contracts between the parties.

In the arbitration proceedings, Fisher asserted a counter-claim for the 13,533.84 bushels delivered under the contracts at Lansing's cancellation contract price of \$4.67 per bushel (totaling \$63,203.03), or, in the alternative, at the contract price of \$3.15 per bushel (totaling 42,631.60). Fisher also sought interest at 7 percent per annum from November 2002; attorney fees of \$7,695.00; as well as reimbursement of arbitration and other costs.

THE DECISION

The arbitrators determined that NGFA Grain Trade Rule 28(B) was pertinent to this case. Rule 28(B) states as follows:

"Rule 28. Failure to Perform

"(B) Buyer's Non-Performance. *If the Buyer finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Seller by telephone and confirmed in writing. The Seller shall then, at once elect either to:*

"(1) agree with the Buyer upon an extension of the contract, or

"(2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or

"(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day."

The arbitrators decided that Rule 28(B)(3) directly applied to this case. As was undisputed by the parties, Lansing advised Fisher on or about Oct. 21 that Lansing would be unable to complete pickup of the wheat by Oct. 31, 2002. The

arbitrators concluded that the parties did not at that time determine a remedy, including a resolution of the fair-market value. The arbitrators determined that cancellation of a contract under 28(B)(3) required a determination of the applicable fair-market value.

On Nov. 1, 2002, Lansing sent trucks to Fisher's elevator in McDonald, Kan., to load wheat under the contract. Fisher refused to load the trucks. Fisher's position was that Lansing was out of the contract terms at that time, and that Fisher was not obligated to load the balance of the wheat. The arbitrators consequently determined that the cancellation of the defaulted portion of the contract took place on Nov. 1, 2002, when loading of the trucks was refused.

The arbitrators then concluded that under the NGFA trade rule, fair-market value should be based on the close of the market the next business day, which in this case was Nov. 4, 2002. On that date, the Kansas City Board of Trade wheat futures price closed at \$4.7225 per bushel. The fair-market value for the basis was KWZ +10 as demonstrated by the written contract between Lansing and Rexford Grain, which is located in the same area as Fisher. Consequently, the arbitrators decided that fair-market value on Nov. 4, 2002 was \$4.7225 (KWZ) +10, which amounted to \$4.8225 per bushel.

THE AWARD

Based upon the evidence presented, the arbitrators ordered that Fisher pay Lansing the following amounts to resolve this dispute:

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| \$59,739.65 | Amount owed to Lansing from Fisher for the cancelled portion of contracts (11,466.16 bushels at \$1.6725 per bushel, representing the difference |
|-------------|--|

between the fair-market value price of \$4.8225 per bushel and the contract price of \$3.15 per bushel; and 25,000 bushels at \$1.6225, representing the difference between the fair-market value price and the contract price of \$3.20 per bushel).

| | |
|-------------|---|
| (42,631.60) | Less amounts owed to Fisher from Lansing for wheat already picked up by Lansing against the contract prior to Nov. 1, 2002. |
| 770.89 | Lansing's arbitration fees |
| \$17,878.94 | Amount Due to Lansing |

The arbitrators also awarded interest to Lansing at a rate of 5 percent per annum from Dec. 1, 2002, until payment by Fisher. As of May 1, 2004, the total amount due to Lansing, including interest of \$1,266.40, is \$19,145.35. The arbitrators denied Lansing's request for attorney fees.

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

Robert W Obrock, *Chair*
 Vice President
 F.C. Stone LLC
 Bowling Green, Ohio

Gene Legg
 General Manager
 Dumas Co-op Elevators
 Dumas, Texas

Dean McIntosh
 Merchandiser
 Attebury Grain, Inc.
 Amarillo, Texas

ARBITRATION APPEALS CASE NUMBER 2037

Appellant: Fisher Farming Co., McDonald, Kan.

Appellee: Lansing Grain Co., Overland Park, Kan.

The Arbitration Appeals Committee individually and collectively reviewed all the evidence and arguments submitted in Arbitration Case Number 2037. It also reviewed the findings and conclusions of the original Arbitration Committee.

The Arbitration Appeals Committee agreed with the original Arbitration Committee that the contracts at issue in this case were defaulted upon. The fact that no agreement was reached between the parties to extend the shipment period on the contracts was verified by the appellant's refusal to load wheat against the contracts on Nov. 1, 2002.

As decided by the original Arbitration Committee, National Grain and Feed Association Grain Trade Rule 28 ("*Failure to Perform*") was the applicable rule to resolve the dispute.

On Nov. 6, 2002, the appellee bought-in the unfilled contract amount of 37,446.91 bushels at \$4.67 per bushel. The Arbitration Appeals Committee determined that this was the appropriate price to use in that it represented actual liquidated damages.

Therefore, the Arbitration Appeals Committee calculated the following damages:

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| \$54,178.56 | [11,466.16 bushels x (\$4.67 - 3.15) = \$17,428.56] + [25,000 bushels x (\$4.67 - 3.20) = \$36,750.00] |
| (\$42,631.60) | Amount Appellee failed to pay to Appellant for wheat picked up |
| \$11,546.96 | Amount due to Appellee |

The Arbitration Appeals Committee awarded \$11,546.96 to Appellee, plus interest at the rate of 5 percent per annum from Nov. 1, 2002, until final payment is made. The Appeals Committee declined to award any arbitration service fees or attorney fees to either party.

Submitted with the unanimous consent of the arbitration appeals committee, whose names appear below:

John L. McClenathan Jr., Chair
Vice President, Grain Group
Archer Daniels Midland Co
Decatur, Ill.

John C. Anderson
Chief Executive Officer
Ritzville Warehouse Co.
Ritzville, Wash.

Steven L. Colthurst
Procurement Manager
Land O' Lakes
Bellevue, Wash.

Philip L. Hageman
Hageman & Associates, LLC
Sunrise, Ariz.

Donald W. Wenneker
Manager - Cash Grain
A.E. Staley Manufacturing Co.
Decatur, Ill.