



Naitonal Grain and Feed Association
Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

November 25, 2003

Arbitration Case Number 2038

Plaintiff: Grainland Cooperative, Haxtun, Col.

Defendant: Mike Thayer, Sterling, Col.

Statement of the Case

On July 22, 2002, the plaintiff, Grainland Cooperative (“Grainland”), and the defendant, Mike Thayer (“Thayer”), entered into a contract for the delivery of 9,500 bushels (475,000 pounds) of white millet (Grainland contract number 1096) at a price of \$10 per hundredweight. The white millet was to be delivered to Fleming or Haxtun, Colo., by Aug. 22, 2002. Both Thayer and Grainland’s representative signed the contract on July 22.

Thayer subsequently delivered 2,303.78 bushels (115,189 pounds) of white millet during the period Aug. 9 through Aug. 12. By letter dated Aug. 9, Thayer advised Grainland of an error, stating that he had meant to contract for 9,500 pounds – not 9,500 bushels – and that he did not have adequate millet to fulfill the remainder of the contract. Grainland informed Thayer that the price of white

millet had risen to \$14 per hundredweight during the time since the contract had been executed. Grainland also offered to discount the buyout difference of \$4 per hundredweight by 50-cents per hundredweight. On Aug. 12, the underfill on the contract totaled 7,196.22 bushels (359,811 pounds). Grainland applied the funds owed to Thayer for the delivered millet to the balance due on the contract underfill.

In this arbitration proceeding, Thayer challenged the sufficiency of notice in the contract regarding application of the National Grain and Feed Association’s (NGFA) Trade Rules and arbitration process. Thayer also alleged that Grainland’s losses were caused by its own conduct, maintaining that he was operating on the belief that the contract was for 9,500 pounds – not 9,500 bushels.

The Decision

The arbitrators concluded that both parties signed and entered into a binding contract. The arbitrators also determined that the contract clearly provided for the purchase of 9,500 bushels (475,000 pounds) of white millet. The contract also stated that, “The rules and regulations of the N.G.F.A. shall apply in all respects regarding this

contract.” Both Grainland and Thayer were obligated to read and understand the contract they were signing. NGFA Grain Trade Rule 3(A) further provides that when confirming contracts, “the parties shall carefully check all specifications therein and, upon finding any material differences, shall immediately notify the other party.”

In this case, the arbitrators observed that both parties signed the contract on July 22, without any changes.

Thayer delivered only 2,303.78 bushels (115,189 pounds) of the 9,500 bushels (475,000 pounds) of white millet under the contract, resulting in an underfill of 7,196.22 bushels (359,811 pounds). On Aug. 12, the price for white millet was \$14 per hundredweight. Thayer consequently owed to Grainland \$4 per hundredweight on the quantity represented by the underfill, which amounted to \$14,392.44. Because Grainland agreed to absorb 50 cents per hundredweight on the quantity represented by the underfill, the balance was reduced by \$1,799.06, leaving a balance due of \$12,593.38.

The arbitrators decided that because Thayer did not respond to Grainland's subsequent communications, Grainland properly applied the funds owed to Thayer (\$11,518.90) for the delivered millet to the balance due on the contract underfill, reducing the balance due from Thayer to Grainland to \$1,074.48.

The Award

The arbitrators ordered Thayer to pay the remaining balance due of \$1,074.48 to Grainland Cooperative. The arbitrators declined to award any interest or attorney fees.

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

James Erickson (*Chair*)

General Manager
Fredericksburg Farmers Co-op
Fredericksburg, Iowa

Ralph R. Showerman

Vice President, Marketing
Star of the West Milling Co.
Frankenmuth, Mich.

Gale E. Shultz

President
South Milford Grain Co.
South Milford, Ind.