



National Grain and Feed Association

Arbitration Decision

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August 5, 2004

Arbitration Case Number 2041

Plaintiff: Eagle Milling Company Inc., Casa Grande, Ariz.

**Defendants: Bob Lueck Dairies LLC, Buckeye, Ariz.
Sonora Desert Dairy LLC, Buckeye, Ariz.**

Statement of the Case

This case involved two contracts for the sale of steam-flaked corn by Eagle Milling Company Inc. ("Eagle Milling") to Bob Lueck Dairies LLC and Sonora Desert Dairy LLC.

The parties entered into the contracts on Sept. 17, 2002, for delivery October to December 2002. One contract (Eagle Milling Contract #5831) was priced at \$148 per ton for 4,000 tons delivered to Bob Lueck Dairies. The other contract (Eagle Milling #5832) for 3,000 tons delivered to Sonora Desert Dairy also was priced at \$148 per ton. Both contracts were written by Eagle Milling and were signed by Robert Lueck on behalf, and as the manager, of both Bob Lueck Dairies and Sonora Desert Dairy (collectively, "Lueck Dairies").

The dispute between the parties revolved around the payment terms governing the two contracts. Neither contract made reference to specific payment terms. Nor did they specify that "usual terms" applied. The only reference to payment terms was found on the invoices, which Eagle Milling mailed to Lueck Dairies shortly after the end of each month. Eagle Milling sent an invoice in the amount of \$240,209.92 in early November for the steamed-flaked corn delivered during the month of October. In the ordinary course of business, the balance was due by the 10th day of each month; however, past practice by the company had provided for acceptance of payments beyond the 10th without penalty to the buyer.

On Dec. 2, 2002, Eagle Milling sent the November month-end statement to Lueck Dairies. The gross amount due on the statement totaled \$477,338.60, comprised of a past-due balance of \$240,209.92 and current charges of \$237,128.68. All charges were for "Corn Flaked Bulk," except one charge (#189842 dated Nov. 30, 2002) for \$4,804.20, which represented 2 percent (24 percent A.P.R.) of the past-due invoices.

On Dec. 2, Eagle Milling also telephoned Lueck Dairies, which agreed to mail the payment by Dec. 3. Eagle Milling continued to provide shipments through Dec. 4 on open-credit terms.

On Dec. 5, Robert Lueck objected by telephone to a change in the terms of the contract. On Dec. 6, a truckload of steam-flaked corn arrived at Lueck Dairies. Eagle Milling's driver had been instructed to require C.O.D. payment prior to unloading this truckload, because Eagle Milling had not received Lueck Dairies' payment. Lueck Dairies refused to pay under the C.O.D. terms, and the truck was rejected. A series of telephone calls ensued that same day between the two parties from 11:30 a.m. to 12:15 p.m. in an attempt to resolve the dispute. Lueck Dairies alleged that Eagle Milling was in default of the contract because of a change in contract terms. At this time, Lueck Dairies also "bought in" corn to cover its needs from December 2002 through March 2003.

On Dec. 9, the original two checks totaling \$240,209.92 arrived at Eagle Milling's office, which then contacted Lueck Dairies to notify it that the C.O.D.-required status was lifted and shipments could resume on prior-payment terms. Lueck Dairies refused to accept any additional shipments. Eagle Milling then attempted to contact Lueck Dairies through a series of telephone calls and certified letters during the period of December 2002 through early January 2003. On Jan. 3, 2003, Eagle Milling sent a letter by fax and certified mail notifying Lueck Dairies that it would be deemed in default on the two contract balances if it did not contact Eagle Milling immediately. Balances of 2,091.98 tons and 1,330.71 tons remained open on the two contracts. On Jan. 6, Eagle Milling received a letter from Lueck Dairies' attorney, stating that Eagle Milling was in default of the contracts. The same day,

Eagle Milling sent a letter by fax and certified mail notifying Lueck Dairies that Eagle Milling would exercise its option to sell out Lueck Dairies' remaining balance of steam-flaked corn.

On Jan. 7, Eagle Milling mailed and faxed a letter notifying Lueck Dairies that the contracts were "sold out." On Jan. 8, Eagle Milling provided Lueck Dairies with the contract cancellation and invoice totaling \$41,072.28, based upon an open quote from a credible source using a spot price of \$129 f.o.b. Maricopa, plus \$7 per ton for freight, equaling a delivered price of \$136 per ton.

The Decision

The arbitrators determined that because Lueck Dairies signed Eagle Milling contract numbers 5831 and 5832, those contracts were binding upon both parties under NGFA Feed Trade Rule 3(B).

The contracts were silent as to payment terms. In the absence of specific payment terms, a buyer reasonably would be expected to pay for goods received, but the contracts did not provide a time frame. When Eagle Milling placed Lueck Dairies on C.O.D. terms, the arbitrators determined that Eagle Milling changed the terms of the contract based upon NGFA Feed Trade Rule 4, which states:

"The specifications of a contract cannot be altered or amended without the expressed consent of both the Buyer and Seller. Any alteration mutually agreed upon between Buyer and Seller must be confirmed by both in writing by the end of the next business day."

Based upon this trade rule, both parties must have agreed in writing to a contract change if one were to take place, and Eagle Milling must have had an agreement with Lueck Dairies to change the payment terms. Therefore, Lueck Dairies was entitled to refuse the truckload that arrived C.O.D. on Dec. 6.

On Dec. 9, Eagle Milling notified Lueck Dairies that the original terms of the contract were in effect and shipments could resume. Concerning this aspect of the dispute, NGFA Feed Trade Rule 17 provides:

"Failure to make any shipment in keeping with the terms and conditions of a contract shall be grounds for the refusal only of such shipment or shipments and not for the rescission of the entire contract or any other contract between the Buyer and Seller."

Thus, Lueck Dairies was required to honor the balance of the contracts pursuant to NGFA Feed Trade Rule 17.

Eagle Milling made unsuccessful attempts to contact

Lueck Dairies to resolve this conflict. After exhausting these efforts, Eagle Milling advised Lueck Dairies in a proper and timely manner that Lueck Dairies was in default of the contracts under NGFA Feed Trade Rule 19(B). Eagle Milling then relied upon appropriate methods to obtain a fair market value and sold out the balance of the contracts in accordance with NGFA Feed Trade Rule 19(B)(3). NGFA Feed Trade Rule 28(L) further provides:

"... the Seller shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Buyer."

The Award

The arbitrators decided in favor of Eagle Milling on the shipments for the balance of the contracts that were improperly refused, and awarded \$39,360.94.

This amount was computed based upon the difference between the contract price of \$148 per ton and the sell-out price of \$136.50 per ton (which equals \$11.50 per ton) and multiplying that figure by the 3,422.69 tons that were outstanding. The arbitrators noted that Eagle Milling used a \$7-per-ton freight rate in its original calculation; however, the freight bill provided indicated a rate of \$7.50-per ton. The arbitrators also awarded interest to Eagle Milling on the award balance at an annual rate of 18 percent from Jan. 22, 2003, which as of Sept. 22, 2003, totaled \$4,723.31 for eight months. The arbitrators further awarded to Eagle Milling its costs for filing the arbitration claim of \$705.36.

The total award payable to Eagle Milling by Bob Lueck Dairies LLC and Sonora Desert Dairy LLC is \$44,789.61. The interest charges will continue to accrue at an 18 percent per annum rate from Sept. 22, 2003 until final payment is made.

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

John Augspurger, Chair
Director of Central Plant Purchasing
Land O Lakes Feed
Shoreview, Minn.

Francis E. Felber
Purchasing Manager
Jennie-O Turkey Store
Barron, Wis.

James M. Glover
General Manager
Glover Milling Co. Inc.
Bailey, N.C.

August 5, 2004

Arbitration Appeals Case Number 2041

**Appellant: Bob Lueck Dairies LLC, Buckeye, Ariz.
Sonora Desert Dairies LLC, Buckeye, Ariz.**

Appellee: Eagle Milling Company Inc., Casa Grande, Ariz.

The Decision

The Arbitration Appeals Committee individually and collectively reviewed all the evidence submitted in Arbitration Case Number 2041. It also reviewed the findings and conclusion of the original arbitration committee.

The Arbitration Appeals Committee affirmed the decision of the original arbitration committee. It also affirmed the level of damages determined by the original arbitration committee, with the exception of the interest rate utilized (18 percent).

Therefore, the Arbitration Appeals Committee awarded the appellee \$39,360.94, plus the appellee's filing fee of \$705.36, plus interest from Jan. 22, 2003 at the rate of 10 percent per annum until final payment is made.

Submitted with the consent and approval of the Arbitration Appeals Committee, whose members' names are listed below:

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

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

Chuck Elsea
Senior Vice President
The Scoular Company
Salina, Kan.

Roger Krueger
Director, Grain Marketing
South Dakota Wheat Growers Association
Aberdeen, S.D.

Edward P. Milbank
President
Milbank Mills Inc.
Chillicothe, Mo.