



National Grain and Feed Association

Arbitration Decision

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May 27, 2004

Arbitration Case Number 2057

Plaintiff: Cooperative Business International Inc., Columbus, Ohio

Defendant: Grain Processing Corporation, Muscatine, Iowa

Statement of the Case

This dispute involved a Jan. 21, 2003 agreement for the purchase and sale of seven hopper cars of distillers dried grains from Grain Processing Corp. (GPC) to Cooperative Business International Inc. (CBI). A broker acting on behalf of GPC initiated the transaction.

The terms and specifications of CBI's purchase contract number 8225, dated Jan. 21, 2003, provided that the grain be of U.S. origin; 25 percent minimum protein; 2.5 percent minimum fat; 12 percent maximum moisture; 8 percent maximum fiber; and yellow color. The broker's sale contract, also dated Jan. 21, 2003, included these identical specifications.

On Jan. 28, the first two cars were shipped by GPC. Upon receipt of the shipping documents from GPC, CBI forwarded these documents by facsimile to its buyer. On Jan. 29, CBI's buyer advised it of the potential problem with the quality of the grain. Also on Jan. 29, CBI received confirmation of contract number 8225 from GPC by U.S. mail. The document was signed and dated by GPC on Jan. 27. It confirmed all the terms and conditions of the contract, except the condition that the color be yellow. Instead, GPC's confirmation indicated in handwriting "no color guarantee." Elimination of the color specification was unacceptable to CBI and its buyer.

The NGFA Feed Trade Rules at issue in this case included the following:

Feed Trade Rule 3. Confirmation of Contracts

(A) Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade, or an agreed amendment setting forth the specifications as agreed upon in the

original articles of trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any material differences, shall immediately notify the other party to the contract, by telephone and confirm by written communication. In the case of minor differences, notification may be by either telephone or written communication.

(B) If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.

(C) When a trade is made through a broker, it shall be the duty of the broker to send a written confirmation not later than the close of the business day following the date of trade to each of the principals setting forth the specifications of the trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the broker. If either party fails to give such notice, the terms and

specifications contained in the confirmation issued by the broker shall govern the contract.

Feed Trade Rule 4. Alteration of Contract

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.

CBI sought damages totaling \$8,281.14, consisting of incremental costs to replace the seven railcars of grain (\$7,902.12), plus arbitration costs (\$379.02). GPC counter-claimed for damages totaling \$4,971.73, consisting of reconsignment/resale costs for the two railcars that had been shipped, including demurrage (\$2,052.41), and cancellation of the other five railcars (\$2,540.30), plus arbitration costs (\$379.02).

The Decision

The arbitrators determined that CBI exchanged documents with GPC's broker in a timely fashion as required under the NGFA Feed Trade Rules. But GPC's confirmation, which was dated and mailed on Jan. 27, did not comply with the deadlines established in NGFA Feed Trade Rules 3 and 4. Rule 3 clearly stipulates the requirements for the timely transmittal of documents to confirm a trade. This rule also specifies the timeframe and mechanism by which either party, if it disputes any of the terms or conditions of the trade, is to inform the other party of the disagreement. Neither GPC nor the broker transmitted to CBI in a timely or otherwise-acceptable manner any rejection of the color specifications.

Feed Trade Rule 4 also provides a mechanism for amending the terms of a contract by providing that any mutually agreed alteration be confirmed in writing by the end of the next business day. Again, neither GPC nor the broker indicated any disagreement with the color specifications to CBI in a manner that complied with the trade rules.

Based upon the evidence presented by the parties, the

arbitrators determined that CBI attempted to resolve the problem with GPC. But GPC remained firm that it would not provide a guarantee of color. CBI then exercised its best efforts to mitigate damages and bought-in alternative supplies to fulfill its contractual obligations. The arbitrators concluded that CBI acted appropriately in buying-in the grain, which permitted it to fulfill its contractual obligations to its client.

The arbitrators also determined that the broker violated NGFA Feed Trade Rule 2(D), which states that, "[a] broker, who, in good faith or otherwise, exceeds his authority is liable for any resulting damages." The arbitrators concluded that the broker was authorized to act on GPC's behalf and GPC consequently was bound to the sales transaction. However, based upon the evidence provided, the arbitrators determined that the broker knowingly exceeded its authority when it bound GPC to the color specification for transactions related to the distillers dried grains. The arbitrators noted that the broker would be liable for the resulting damages under Feed Trade Rule 2(D), but that a judgment could not be rendered against the broker because it was not named as party in this case.

The Award

Therefore, the arbitrators awarded \$7,902.12 in favor of CBI and against GPC as replacement costs for the seven railcars of distillers dried grains. The arbitrators also awarded interest on that amount to CBI at a rate of 6 percent per annum from Jan. 21, 2003, until payment is made by GPC. The arbitrators further awarded arbitration costs of \$379.02. As of April 21, 2004, the total amount due to CBI, including interest, is \$8,873.80.

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

Jack Smit, Chair
Vice President, New Business Development
Furst-McNess Co.
Freeport, Ill.

Stephen Norris
Vice President, Grain Marketing
Perdue Farms Inc.
Salisbury, Md.

Scott Swanson
Manager of Commodity Risk and Marketing
Midwest Grain Processors
Lakota, Iowa