



# National Grain and Feed Association Arbitration Decision

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September 2, 2004

## Arbitration Case Number 2058

**Plaintiff: West Bend Elevator Co., West Bend, Iowa**

**Defendant: N&K Farms LLC, Whitemore, Iowa**

### Statement of the Case

This dispute involved three contracts for the sale of grain by N&K Farms LLC (N&K) to West Bend Elevator Co. (West

Bend). Keith Roth (Roth) signed the three contracts on behalf of N&K. The contracts provided the following basic terms:

Contract Date	Contract Number	Grain	Quantity (Bushels)	Price Per Bushel	Delivery Completion	Delivery Location
6/04/02	15985	Soybeans	12,000	\$4.40	10/31/02	Whitemore
6/25/02	16406	Corn	40,000	\$2.01	10/30/02	Hobarton
6/26/02	16450	Corn	25,000	\$2.18	5/31/03	Hobarton

West Bend claimed that N&K failed to deliver any grain under the contracts and failed to provide notice that delivery would not occur. West Bend maintained that it then cancelled the contracts and calculated that its losses totaled \$22,170. In documents initially filed in this proceeding, West Bend anticipated that N&K would raise the argument that it was not bound by these contracts because Roth did not have the authority to contractually bind N&K.

In reply arguments presented to the arbitrators in this case, N&K did not dispute West Bend's assertion that no grain was delivered under the contracts. Nor did N&K contend in those arguments that Roth lacked authority to contractually bind N&K. Rather, N&K claimed that it did provide adequate notice that delivery under the contracts would not occur. According to N&K, West Bend subsequently failed to mitigate its damages and incorrectly calculated its alleged losses.

### The Decision

The arbitrators concluded that representatives of both West Bend and N&K duly signed each of the three contracts, including Roth, who evidently possessed proper authority to bind N&K based upon documents and statements submitted by the parties in this case. The arbitrators consequently determined that both West Bend and N&K were bound to the terms of the contracts. The arbitrators also determined that N&K failed to deliver any grain under either contract, which evidently was not disputed by N&K.

As to the question of whether notice was provided that grain would not be delivered, the arbitrators considered N&K's statement that it provided notice to West Bend when "in early

October ... Roth personally advised [West Bend employees] that he would not make delivery on the grain contracts until settlement was made on the other matter which is now in litigation...."

In this regard, the arbitrators also considered NGFA Grain Trade Rule 28(A) (Seller's Non-Performance), which states as follows:

*"If the Seller 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 Buyer by telephone and confirmed in writing...."*

*“ If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to: (1) agree with the Seller upon an extension of the contract, or (2) buy-in for the account of the Seller, 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.”*

N&K contended that the requirements of Grain Trade Rule 28 did not apply in this instance, and that the notice it provided to West Bend was adequate. However, the arbitrators determined that, notwithstanding the specific requirements of Grain Trade Rule 28, the statements allegedly made to West Bend employees referring largely to an unrelated

matter on an unspecified date did not establish proper notice under any standard upon which West Bend should have anticipated N&K’s default and calculated its damages differently than it did in this case.

The arbitrators concluded that, upon making the determination that N&K had defaulted at the end of the contract shipment periods, West Bend properly cancelled the defaulted portion of the contracts at the fair market value based upon the close of the next business day. The market losses on the defaulted portions of the contracts were calculated as follows: 96-cents per bushel on the 12,000 bushels of soybeans under Contract Number 15985 (totaling \$11,520); 26-cents per bushel on the 40,000 bushels of corn under Contract Number 16406 (totaling \$10,400); and 1-cent per bushel on the 25,000 bushels of corn under Contract Number 16450 (totaling \$250). The resulting market losses sustained by West Bend totaled \$22,170.

## **The Award**

Accordingly, the arbitrators ordered N&K to pay \$22,170 to West Bend for the market losses it sustained resulting from N&K’s default on the contracts.

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

**Arthur Nor, Chair**

Grain Manager  
Hamilton Farm Bureau Co-op Inc.  
Hamilton, Mich.

**Paul Coppin**

General Manager  
Reynolds United Co-op  
Reynolds, N.D.

**John L. Fredrickson**

President  
Kentland Elevator & Supply Inc.  
Kentland, Ind.