



National Grain and Feed Association

Arbitration Decision

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September 30, 2004

Arbitration Case Number 2059

Plaintiff: Masterfoods USA Inc., Vernon, Calif.

Defendant: Bennett Grain Company, Windsor, Ill.

Statement of the Case

Masterfoods USA Inc. ("Masterfoods") initiated this arbitration case against Bennett Grain Co. ("Bennett") on Aug. 13, 2003, seeking to recover \$421,717.79 in overpayments made to Bennett between 1999 and 2002 for corn supplied and delivered to Masterfoods' facility in Mattoon, Ill. during this period.

Masterfoods acknowledged that the underlying grain contracts, which were the basis for the overpayments, were not at issue and that there was no allegation that Bennett breached these contracts. Rather, Masterfoods asserted a claim for unjust enrichment arising from Bennett's receipt and use of the overpayments to the detriment of Masterfoods.

Bennett contended that all but two of the overpayment claims by Masterfoods were time-barred pursuant to Section 3(d) of the NGFA Arbitration Rules. Bennett also contended that with respect to the claims that were not time-barred, Masterfoods' actions or inactions that gave rise to the overpayments should preclude recovery. Further, Bennett took exception to Masterfoods' calculation of the overpayment amount should Bennett's time-bar defense fail.

Bennett also asserted a counterclaim and right of setoff for alleged underpayments by Masterfoods on contracts representing non-biotechnology-enhanced grain contracts in the event Section 3(d) of the NGFA Arbitration Rules did not apply to bar Masterfoods' overpayment claims. Masterfoods acknowledged an underpayment on these contracts, but the amount of the underpayment was in dispute.

The evidence presented by the parties established that between the period of Feb. 15, 1999 and July 11, 2002, the parties entered into 61 oral contracts for the purchase of corn by Masterfoods for delivery to its facility in Mattoon, Ill. Contrary to the NGFA Grain Trade Rules and the custom of the trade, there were no written contracts and no confirmations exchanged between the parties. Masterfoods communicated its internal purchase order numbers via phone to Bennett, which in turn recorded the purchase order numbers on its truck tickets.

Masterfoods issued scale tickets to Bennett acknowledging the purchase order number, quantity, date and time of each truckload delivered.

Calculations of the contract price, applicable discounts and payment were done locally through Masterfoods' Mattoon facility. Miscalculation of the contract price occurred regularly, sometimes as a result of duplicative freight payments, sometimes because of errors computing deliveries from bushels to kilograms, and occasionally as the result of clerical errors. Settlement sheets were not prepared or exchanged, and discounts that were taken were not reconciled to specific contracts or loads.

Bennett said it became aware of payment irregularities in the spring of 2002, but because of a lack of adequate information with respect to Masterfoods' calculation methods, Bennett was unable to reconcile the accounts. After some initial inquiries by Bennett that went unresolved, Bennett said it chose to "trust" Masterfoods and let the matter drop.

In August 2002, Masterfoods discovered its calculation errors and on or about Aug. 19, 2002, notified Bennett of the overpayments. From Aug. 19, 2002 until the filing of this arbitration case in August 2003, Masterfoods refined its calculation of the overpayment amounts and sought to work with Bennett on a mutually acceptable resolution of its claims. Filing of the arbitration complaint occurred on Aug. 13, 2003.

The Decision

The threshold question to be answered in this case was whether Masterfoods' claim for unjust enrichment was time-barred by Section 3(d) of the NGFA Arbitration Rules. The relevant portion of Section 3(d) of the NGFA Arbitration Rules expressly provides as follows:

"The original complaint in connection with any disputed matter proposed for arbitration must be filed with the National Secretary

within twelve (12) months after a claim arises, or within twelve (12) months after the expiration date for performance of the contract or contracts involved....”

Neither party disputed the applicability of this rule. Rather, they differed as to the application of this rule to the facts of this case.

Masterfoods relied upon the first prong of this rule, which states: “The original complaint...must be filed with the National Secretary within twelve (12) months after the claim arises...” Masterfoods argued that a claim for unjust enrichment did not arise in this case until Masterfoods discovered the overpayment in late August 2002. Masterfoods asserted that application of the discovery rule was appropriate in this context because its claim was not based upon any act in time constituting a breach of contract or intentional wrongdoing on Bennett’s part. Alternatively, Masterfoods argued that even under the second prong of Section 3(d), its claims were timely because there was an overarching contract or relationship with Bennett that had not expired.

Bennett, on the other hand, argued that whether one relied upon the first prong or the second prong of Rule 3(d), the result was the same – any claims that arose prior to Aug. 13, 2002, were time-barred if Bennett’s performance on the underlying contracts was complete as of that date. Bennett contended pursuant to the second prong of the rule that the “expiration date for performance of the contract”...was the date of the last truck delivery fulfilling the quantity requirement on any given contract.

The arbitrators concluded that Rule 3(d) was applicable to this case and served to time-bar 59 of the 61 overpayments asserted by Masterfoods. The reasoning of the arbitrators was as follows: First, the arbitrators rejected for lack of sufficient evidence any assertion by Masterfoods of an overarching contract or relationship that effectively would extend the time for filing of these claims. Second, the arbitrators rejected the application of the “discovery rule” in this instance because there was no evidence or allegation of fraud, misrepresentation, concealment or bad faith on the part of Bennett, and because ordinary diligence on the part of Masterfoods could reasonably have uncovered the wrong. Rule 3(d) of the NGFA Arbitration Rules was designed to ensure that any claims presented to NGFA for arbitration, whether in contract or otherwise, proceeded to final resolution within a reasonable time. The arbitrators concluded that application of the discovery rule should be limited to those circumstances where bad faith on the part of one party prevented discovery of the claim by the other, or to situations in which ordinary diligence on the part of the claimant could not have reasonably uncovered the wrong. That simply was not the case in this dispute. The arbitrators reasoned that to apply the discovery rule in this context of contractual overpayments would create uncertainty of contract finality and reward parties that negligently managed their money and accounts.

The arbitrators determined that under the first prong of Arbitration Rule 3(d), Masterfoods’ claims arose when the overpayments by Masterfoods were made. The evidence presented to the arbitrators was sufficient to conclude that any overpayments on contracts MTP12597 and MTP12628 were made within the 12-month claim period. Payments on the

remaining 59 contracts either were – or by industry practice should have been – paid before Aug. 13, 2002. With respect to contracts MTP12597 and MTP12628, the arbitrators concluded that Masterfoods had a viable and timely claim for recovery of any overpayments made to Bennett.

The arbitrators rejected Bennett’s assertion that Masterfoods’ “unclean hands” destroyed its ability to prove its case. While there was ample negligence on the part of Masterfoods, it was simply that – negligence. It did not rise to a level of recklessness or gross negligence that would bar a claim for unjust enrichment. Further, Bennett’s own negligent contracting and accounting actions and inactions left it little room to criticize.

Therefore, the arbitrators decided that retention of the overpayments in conjunction with contracts MTP12597 and MTP12628 would violate fundamental principles of equity. Based upon the evidence presented in the parties’ written arguments and during an oral hearing, overpayments on these contracts were \$6,067.31 and \$31,689.77, respectively, for a total of \$37,757.08.

Bennett asserted a right of setoff, or counterclaim, arising from underpayments by Masterfoods on certain non-biotech-enhanced corn contracts between the parties. NGFA Arbitration Rule 2 allows for the inclusion of cross claims, counterclaims or offsets as set forth by a defendant “...but in no case shall matters submitted by the defendant be any other than those directly related to the transaction on which the original complaint is made.” Since the claim of offset/counterclaim is not related to Masterfoods’ overpayments on any of the 61 underlying contracts that supported its claim, the arbitrators ruled that while a valid claim may exist, it is not related directly to the main claims and, therefore, should be dismissed.

The Award

The arbitrators awarded Masterfoods \$37,757.08 to be paid by Bennett in accordance with NGFA Arbitration Rules Section 8(k). Bennett having had the benefit of the funds also was ordered to pay interest on the outstanding amount from Sept. 1, 2002 until paid in full. Interest shall accrue at a rate of 6 percent per annum.

The counterclaim and right of offset asserted by Bennett were dismissed. The arbitrators further determined that each party was responsible for its own attorney fees.

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

Todd Gerdes, *Chairperson*
Specialty Grains Manager
Aurora Cooperative
Aurora, Neb.

Brad Haugeberg
General Manager
Cenex Harvest States
Minot, N. D.

Laura Witte
Assistant Vice President/Assistant General Counsel
Cargill Inc.
Minneapolis, Minn.