



National Grain and Feed Association

Arbitration Decision

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September 30, 2004

Arbitration Case Number 2060

Plaintiff: Masterfoods USA Inc., Vernon, Calif.

Defendant: Effingham Clay Services, Effingham, Ill.

Statement of the Case

Masterfoods USA Inc. ("Masterfoods") initiated this arbitration case against Effingham Clay Services ("Effingham") on Aug. 13, 2003, seeking to recover \$202,166.52 in overpayments made to Effingham between 1999 and 2002 for corn supplied and delivered during this time frame to Masterfoods' facility in Mattoon, Ill.

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

Effingham contended that all the overpayment claims by Masterfoods were time-barred pursuant to Section 3(d) of the NGFA Arbitration Rules. Effingham also contended that if any of the claims were not time-barred, Masterfoods' actions or inactions that gave rise to the overpayments should preclude recovery. Effingham further asserted that the evidence presented by Masterfoods was insufficient to establish the basis or amount of the alleged overpayments.

Effingham also asserted a counterclaim against Masterfoods for an improper offset against a corn contract taken by Masterfoods in September 2002. The offset was for discounts to a wheat contract, which Effingham performed in March 2001. Masterfoods acknowledged the deduction, but asserted that Effingham's counterclaim was untimely.

The evidence presented by the parties established that between the period of Feb. 19, 1999 and Aug. 15, 2002, the parties entered into 33 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 by the parties. Masterfoods communicated its internal purchase order numbers via phone to Effingham. Masterfoods issued scale tickets to Effingham 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.

Effingham became aware of payment irregularities in August 2002 after receiving a call from Masterfoods grain buyer, Jason Foshang. In September 2002, Masterfoods officially notified Effingham 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 Effingham 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 Effingham’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 Effingham that had not expired.

Effingham, 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 Effingham’s performance on the underlying contracts was complete as of that date. Effingham 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 all of the 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 Effingham, and because ordinary diligence on the part of Masterfoods could have reasonably 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 upon 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 NGFA 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 the overpayments on contracts MTP11265 through MTP12516 were **not** made within the 12-month claim period. With respect to the last contract (MTP12631), the arbitrators decided that deliveries occurred between the dates of Aug. 7 and Sept. 13, 2002. However, the overpayment errors occurred on deliveries made by Effingham prior to Aug. 13, 2002. The information supplied by Masterfoods was insufficient to establish the date of the overpayment, but it was logical to conclude that given Masterfoods’ general knowledge of the overpayment problem as early as August 2002, any incorrect payments that formed the basis of its claim occurred prior to Aug. 13, 2002, and thus were time-barred pursuant to Rule 3(d).

With respect to the counterclaim asserted by Effingham, the arbitrators determined that assertion of the claim was improper. 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 was not related to Masterfoods’ overpayments on any of the 33 underlying contracts that supported its claim, the arbitrators ruled that it should be dismissed. Even if some relationship could have been established, the arbitrators found that Effingham had not produced sufficient evidence to prove its claim.

The Award

Therefore, the claim of Masterfoods was denied. The counterclaim of Effingham was 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 are listed 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.