



National Grain and Feed Association

Arbitration Decision

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October 28, 2004

ARBITRATION CASE NUMBER 2067

Plaintiff: Fred Wilson, Shepherd, Mich.

Defendants: Brown Milling, Shepherd, Mich.;
Northern Star Integrated Services LLC, Okemos, Mich.

STATEMENT OF THE CASE

On Aug. 5, 2003, Fred Wilson ("Wilson") initiated this arbitration case against Brown Milling of Shepherd ("Brown Milling") and Northern Star Integrated Services LLC ("Northern Star"). Wilson had delivered 5,817 bushels of wheat to Brown Milling, for which Wilson was paid \$7,249.45. The dispute arose regarding Wilson's compensation for the wheat produced, the fertilizer applied and the crop insurance premium involved.

On Oct. 11, 2001, both parties executed three documents: a contract for services, an option to purchase, and an addendum to the option to purchase. Under the terms of the contract for services, the parties agreed, among other things, that Wilson would provide labor and management, and that Northern Star would "scout the fields" and make recommendations to Wilson regarding practices for planting and harvesting production from the contracted acreage. Northern Star also agreed to select, provide and pay for fertilizer, pesticides and crop insurance as determined by Northern Star. The option to purchase contract provided Northern Star the option to purchase all of the wheat Wilson produced on the contracted acreage. Under the option to purchase, Wilson would be paid \$80 per acre for 65 acres of wheat production, with additional price-and-yield adjustments. The option to purchase provided that adjustments would be determined by the actual yield of the acreage and an indexing formula using the CBOT September 2002 futures price in a manner defined in the contract. In addition, the addendum to the option-to-purchase contract provided an additional 20-cent-per-bushel premium on wheat delivered that had moisture content greater than 16.5 percent.

Wilson contended that the contracts were ambiguous and unclear. Wilson argued that he should be paid \$3.07 per bushel for the wheat produced. This price represented the CBOT September 2002 futures price selected by Wilson after the parties signed the original documents. Wilson also requested

reimbursement for the crop insurance and additional fertilizer that he purchased without Northern Star's recommendation or consent. Wilson claimed damages for \$13,738.04 as outlined below:

5,817 bushels @ \$3.07 per bushel	\$17,858.19
Premium for wet grain @ \$0.20 per bushel	\$ 1,163.40
Northern Star settlement check	\$(7,249.45)
Potash and application	\$ 1,527.15
Crop insurance	\$ 438.75
Total Claimed Damages	\$13,738.04

Northern Star asserted a counterclaim against Wilson for \$449.02, representing what it maintained was an overpayment on wet grain premiums paid to Wilson.

Both Wilson and Northern Star also sought attorney fees.

THE DECISION

In reaching their decision in this case, the arbitrators focused upon the actual contract terms and conditions. The arbitrators noted that the Preamble to the NGFA Grain Trade Rules states:

"[P]arties using these rules are free to agree upon any contractual provisions which they deem appropriate and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to the matter dealt with by the pertinent rule."

The arbitrators observed that in this case, the parties agreed to terms by signing the contracts and addendums, which altered and superceded certain provisions in the NGFA Trade Rules.

The arbitrators reviewed closely all of the arguments and documents submitted by the parties. The arbitrators concluded that the contracts were very explicit as to the responsibilities and obligations assigned to both parties. The contract for services stated as follows:

“Any additional inputs and the cost thereof, (including fertilizer) desired by the Producer to be applied to the Acreage for the purpose of or benefit of subsequent crops shall be the responsibility of the Producer, and shall not be applied without the prior written consent of [Northern Star].”

The arbitrators noted that because no information was provided in this case concerning the fertility levels of the acreage involved, they had an insufficient basis upon which to determine if the additional fertilizer that Wilson applied was for the currently growing wheat crop or for a subsequent crop. In any event, because Northern Star had not provided written consent as required in the contract, the arbitrators concluded that cost of the fertilizer was Wilson’s responsibility. In addition, the arbitrators determined that crop insurance coverage also specifically was addressed in the contract for services, which stated that such coverage was at Northern Star’s option. The arbitrators decided that this expense properly was borne by Wilson because no evidence was presented that Northern Star directed Wilson to seek the coverage.

The option-to-purchase contract established that Wilson would be paid an initial settlement of \$80 per acre and an initial CBOT September 2002 wheat futures price of \$3 per bushel, with an accompanying index for price adjustments. On Oct. 11, 2001, the following values were used to establish the initial settlement per acre as part of the pricing formula outlined in the option-to-purchase contract:

Average Production History (APH):	80 bushels per acre
Expected Yield:	80 bushels per acre
Initial Settlement:	\$80 per acre
Initial CBOT September 2002 Wheat Futures Price:	\$3 per bushel

Adjustment for Final Yield	
Actual yield per acre	89.50
Less APH	80.00
Bushel Difference	9.50

The parties also agreed in the option-to-purchase contract as follows:

“[Northern Star] shall pay to Producer an amount equal to 1% of the Adjusted Settlement Per Acre...for each bushel or part thereof per acre by which the actual net yield per acre exceeds the Expected Yield per acre shown above (i.e. APH). In the event the actual yield per acre is less than the Expected Yield per acre shown above, the settlement per acre...shall be reduced by an amount equal to 1% of such settlement per acre for each bushel or part thereof that actual yield per acre is less than the Expected Yield....”

The arbitrators determined that Wilson had the opportunity to increase his wheat futures price based upon movement of the futures market, which he elected to do. Consequently, Wilson’s final average pricing was increased to \$3.07 per bushel.

Adjusted Settlement Calculation

Final Average Pricing	\$ 3.07
Less Initial CBOT Futures Price	\$ (3.00)
Gain (Loss)	\$ 0.07
Times APH of 80 BPA	\$ 5.60
Plus Initial Settlement per Acre	\$ 80.00
Adjusted Settlement per Acre	\$ 85.60

To arrive at the final settlement per acre, the following calculations were necessary:

- Bushel Difference x Adjusted Settlement x 1 percent = Yield Adjustment
9.50 x \$85.60 x 1 percent = \$8.13
- Yield Adjustment + Adjusted Settlement = Final Settlement per Acre
\$8.13 + 85.60 = \$93.73
- Harvested acres x Final Settlement per Acre = Final Settlement, with adjustments
65 x \$93.73 = \$6,092.45

The addendum to the option-to-purchase contract provided for payment of a 20-cent-per-bushel premium to Wilson on all **qualifying** wheat delivered. The arbitrators determined that Northern Star applied the quantity of total bushels delivered – not only those in excess of 16.5 percent moisture – and consequently overpaid Wilson by \$432.07 (not \$449.02 as stated in the counterclaim).

All of the claims and arguments of the parties were reviewed and considered thoroughly by the arbitrators, even those not expressly addressed in this written decision. Therefore, this decision is intended to resolve all issues between the parties at issue in this case.

THE AWARD

The arbitrators denied Wilson's claim for payment in the amount of \$3.07 per bushel on his production, as well as Wilson's claims for reimbursement on expenses for fertilizer and crop insurance. In so doing, the arbitrators relied upon the specific terms of the contract, including the fact that the CBOT September 2002 wheat futures was a component of the pricing mechanism, and not what the contract intended would be paid per bushel.

The arbitrators awarded judgment to Northern Star against Wilson for \$432.07 representing the overpayment of the premium on wheat exceeding 16.5 percent moisture.

Because neither party presented any documentation regarding the amount of attorney fees actually incurred or reasonably warranted, the arbitrators denied both parties' claims for attorney fees.

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

Jay Mathews, *Chairperson*

Grain Manager
Effingham Equity
Effingham, Ill.

Dean Kohlmeyer

Grain Manager
StateLine Cooperative
Burt, Iowa

Gregg Weidner

Branch Manager
Demeter L.P.
South Beloit, Ill.