



National Grain and Feed Association

Arbitration Decision

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October 28, 2004

ARBITRATION CASE NUMBER 2068

Plaintiff: Blaine Schafer, Shepherd, Mich.

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

STATEMENT OF THE CASE

On Aug. 5, 2003, Blaine Schafer (“Schafer”) initiated this arbitration case against Brown Milling of Shepherd (“Brown Milling”) and Northern Star Integrated Services LLC (“Northern Star”). Schafer claimed that he delivered 9,474 bushels of wheat to Brown Milling, for which Schafer was paid \$10,434.02. The dispute arose regarding Schafer’s compensation for the wheat produced, the fertilizer applied and the crop insurance premium involved.

On Jan. 21, 2002, 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 Schafer would provide labor and management, and that Northern Star would “scout the fields” and make recommendations to Schafer 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 buy all of the wheat Schafer produced on the contracted acreage. Under the option to purchase, Schafer would be paid \$80 per acre for 129 acres of wheat grown on three tracts 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 index-pricing formula using the Chicago Board of Trade (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.

Schafer contended that the contracts were ambiguous and unclear. Schafer argued that he should be paid \$3 per bushel for

one-half of the wheat produced, and \$2.95 per bushel for the remainder. The latter price represented the CBOT September 2002 futures price selected by Schafer to price half the production on Feb. 22, 2002 – after the parties had signed the original documents. Schafer also requested reimbursement for the crop insurance and additional fertilizer that he purchased without Northern Star’s recommendation or consent. Schafer claimed damages totaling \$23,015.43¹ as outlined below:

9,474 bushels @ \$2.975 per bushel	\$28,185.15
Premium for wet grain @ \$0.20 per bushel	\$ 1,894.80
Northern Star settlement check	\$(10,434.02)
Potash and application	\$ 3,160.50
Crop insurance	\$ 209.00
Total Claimed Damages	\$23,015.43

Northern Star asserted a counterclaim against Schafer for \$927.15, representing what it maintained was an overpayment on wet grain premiums paid to Schafer.

Both Schafer 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

¹ The arbitrators determined that Schafer miscalculated his total claimed damages in the petitioner’s arbitration summary. The correctly calculated total of Schafer’s claimed damages was \$23,015.43.

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 by the parties 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 Schafer applied was for the currently growing wheat crop or for a subsequent crop. In any event, because Northern Star had not provided written consent for the application of additional fertilizer, as required pursuant to the contract, the arbitrators concluded that cost of the fertilizer was Schafer’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 Schafer because no evidence was presented that Northern Star directed Schafer to seek the coverage.

The option-to-purchase contract established that Schafer 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 Jan. 21, 2002, 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 (the contract was for 129 acres of production, but Schafer only delivered what was harvested from 119 acres because the remaining 10 acres were too wet to harvest):

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	75.50
Less APH	80.00
Bushel Difference	(4.50)

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 Schafer had the opportunity to affect his wheat futures price index based upon movement of the futures market. On Jan. 22, 2002, Schafer elected to use a CBOT September 2002 futures price of \$3 per bushel for half of his expected production, as permitted under the option-to-purchase contract. Schafer claimed that \$2.95 applied to the other half of the expected production, relying upon the CBOT September 2002 futures price as of Feb. 22, 2002; however, Northern Star claimed the price was \$2.90 per bushel. The arbitrators concluded that both of these values were outside of the established trading range on that day for the CBOT September 2002 wheat futures contract. Neither party provided to the arbitrators any written documentation of any contract change, as was required under the contract. Therefore, the arbitrators elected to apply the price of \$2.93, which was within the daily trading range on Feb. 22, 2002. Schafer’s final average pricing consequently was \$2.965 per bushel.

Adjusted Settlement Calculation	
Final Average Pricing	\$ 2.965
Less Initial CBOT Futures Price	\$ (3.000)
Gain (Loss)	\$ (0.035)
Times APH of 80 BPA	\$ (2.80)
Plus Initial Settlement per Acre	\$ 80.00
Adjusted Settlement per Acre	\$ 77.20

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

- Bushel Difference x Adjusted Settlement x 1 percent = Yield Adjustment
(4.50) x \$77.20 x 1 percent = (\$3.47)
- Yield Adjustment + Adjusted Settlement =

Final Settlement per Acre
 $(\$3.47) + \$77.20 = \$73.73$

- Harvested acres x Final Settlement per Acre =
Final Settlement, with adjustments
 $119 \times \$73.73 = \$8,773.87$

The addendum to the option-to-purchase contract provided for payment of a 20-cent-per-bushel premium to Schafer 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 Schafer by \$927.15.

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 Schafer's claim for payment in the amount of \$2.975 per bushel ($\frac{1}{2}$ @ \$3 per bushel and $\frac{1}{2}$ @ \$2.95 per bushel) on his production, as well as Schafer'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 price 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 Schafer for \$790.30, representing the \$927.15 overpayment less \$136.85 due to Schafer from miscalculation of the final adjusted settlement.

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.