



National Grain and Feed Association

Arbitration Decision

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October 27, 2005

Arbitration Case Number 2079

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Jeff Stone d/b/a Stone Farms, Bernie, Mo.

Statement of the Case

This dispute involved a claim by Cargill Inc. (Cargill) against Jeff Stone d/b/a Stone Farms (Stone) alleging that Stone breached and failed to deliver on six contracts for corn and soybeans. Cargill cancelled the disputed contracts with Stone as a result of the alleged non-delivery and sought to collect damages representing differences in market prices, which totaled \$17,626.34.

The contracts in dispute were as follows:

- Contract number SIKE-AP-32530 for shipment Aug. 1 - Sept. 30, 2002 of 50,000 bushels of corn;
- Contract number SIKE-AP-32533 for shipment Oct. 1 - Nov. 30, 2002 of 15,000 bushels of soybeans;
- Contract number SIKE-AP-32535 for shipment Oct. 1 - Nov. 30, 2002 of 1,200 bushels of soybeans;
- Contract number SIKE-AP-36274 for shipment Oct. 1 - Nov. 30, 2002 of 10,000 bushels of soybeans;
- Contract number SIKE-AP-36723 for shipment Jan. 1 - Jan. 31, 2003 of 10,000 bushels of corn; and
- Contract number SIKE-AP-37159 for shipment Jan. 1 - Jan. 31, 2003 for 10,000 bushels of corn.

Cargill claimed that Stone failed to deliver 8,263.59 bushels under contract number SIKE-AP-32530, as well as all of the quantities involved in the subsequent contracts.

In his submissions in this case, Stone concurred that he entered into the three contracts for corn (contract numbers SIKE-AP-32530, SIKE-AP-36723 and SIKE-AP-37159) and one of the contracts in dispute for soybeans (SIKE-AP-36274). However, Stone denied entering into the other two contracts for soybeans (SIKE-AP-32533 and SIKE-AP-32535). Stone also stated that he entered into contract number SIKE-AP-36274 only after Cargill's representative allegedly assured Stone that he had no other outstanding soybean obligations under contract. Stone stated that he shipped only 41,736.41 bushels of the 50,000 bushels of corn under contract number SIKE-AP-32530, and that no other corn or soybean deliveries were made under any of the other referenced contracts. Stone further stated that no further deliveries were made under these contracts because a dispute arose regarding the extent of Stone's soybeans obligations and Cargill's alleged assurances that Stone had no such obligations beyond the terms of contract number SIKE-AP-36274.

In addition, Stone maintained that, even if it were assumed that he had breached any of the contracts, Cargill should not be permitted to arbitrarily select the date and price to cancel the contracts and establish damages.

The Decision

The arbitrators closely examined the parties' arguments and documents submitted in this case, including the actual contracts in dispute. The arbitrators determined that Stone signed each of the contracts in question. In doing so, the arbitrators

consequently concluded that Stone acknowledged the existence of each contract, and that each contract represented valid obligations to which Stone agreed to be bound. The arbitrators determined that Stone also signed subsequent pricing confir-

mations and addendums of the original contracts, which further indicated Stone's acknowledgment of these obligations.

In consideration of Stone's challenge of the date that Cargill selected to cancel the contracts, the arbitrators first determined that each of the disputed contracts specifically stated that the NGFA's rules were to govern. NGFA Grain Trade Rule 28 provides that once a seller gives notice that it will default on a contract, or at such time that a buyer can determine by exercising due diligence that the seller will default, the buyer then has the option to "*cancel the defaulted portion of the*

contract at fair market value based on the close of the market the next business day." Cargill canceled the contracts as of Feb. 1, 2003, which was after the final date for delivery on any of the contracts. The arbitrators concluded that had Cargill, instead, used the day after the contractual delivery date for each contract to separately calculate its damages (Oct. 1, 2005 for contract number SIKE-AP-32530, and Dec. 1, 2002 for contract numbers SIKE-AP-32533, SIKE-AP-32535 and SIKE-AP-36274), Stone could have been liable for the amount of \$17,994.09, which was greater than the damages claimed by Cargill based upon the Feb. 1, 2003 cancellation date.

THE AWARD

Therefore, the arbitrators unanimously decided to award to Cargill the damages claimed of \$17,626.34. The arbitrators further ordered that interest accrue at the rate of 7.5 percent from 30 days after contract cancellation – March 1, 2003 – until paid.

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

Scott Mills, Chair

Vice President and Feed Grain Manager
Lansing Grain Co.
Overland Park, Kan.

Darren Deffenbaugh

Branch Manager
Mercer Landmark Inc.
Convoy, Ohio

Phil Seaman

General Manager
Farmers Grain Co. of Chestnut
Chestnut, Ill.