



National Grain and Feed Association

# Arbitration Decision

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## Arbitration Case Number 2080

**Plaintiff:** Cargill Inc., Minneapolis, Minn.

**Defendant:** Anderson Farms, Dyersburg, Tenn.

### Statement of the Case

This dispute involved a contract for sale and delivery of 5,000 bushels of soybeans entered into between Cargill Inc. and Anderson Farms.

The contract provided for delivery of the soybeans by Anderson Farms to Cargill between Oct. 1 and Nov. 30, 2002. Cargill's representative signed purchase contract number DYER-AP-26836 and the ProPricing MarketPro Addendum on Jan. 3, 2002. Anderson Farms' representative signed the contract and addendum on Jan. 10, 2002. In this arbitration case, Cargill claimed that Anderson Farms failed to deliver any of the soybeans due under the contract by the delivery deadline of Nov. 30, 2002.

The dispute between Cargill and Anderson Farms focused upon the pricing of the soybeans intended to be delivered under the contract. The purchase contract provided the following terms related to pricing:

*"Seller has the right and obligation to select the date on which the final Contract Price will be established (the 'Pricing Date'). Seller's selection of the Pricing Date must be made on or before the Pricing Deadline, and must be communicated to Buyer during an active trading daytime session of the applicable futures exchange. The Pricing Deadline is **October 1, 2002**. If Seller does not choose a Pricing Date on or before the Pricing Deadline, Buyer is authorized to establish the final contract price at Buyer's option thereafter. If the commodities have been delivered prior to the Pricing Date, the Contract Price will be based on Buyer's bid at the Delivery Point on the Pricing Date. If the commodities have not yet been delivered, the Contract Price will be based on Buyer's bid on the Pricing Date at the Delivery Point for the Shipment Period referenced in the Contract."* [Emphasis in original.]

The contract addendum contained the following additional provisions related to pricing:

**"PRICING.** For that portion of the Bushel Quantity to be priced under each Propricing Selection, Cargill shall pay Seller a price per bushel equal to the applicable CARGILL HEDGE PRICE (as defined below), plus or minus the Basis to be set by Seller, minus the applicable service fee, and minus the applicable Performance Incentive (if any).

"A. **CARGILL HEDGE PRICE.** The CARGILL HEDGE PRICE shall be defined as the final futures selling price achieved by Cargill through its hedging during the Pricing Period (as defined below) for each ProPricing MarketPro Selection. Based on Seller's selections below, Cargill will hedge all grain to be priced hereunder using the advice of (1) its own traders and/or (2) that of a designated employee of the third-party commodity trading advisor(s) listed below. The Cargill Hedge Price for each ProPricing MarketPro selection shall be determined between **January 1, 2002 and September 27, 2002** ('Pricing Period'). For purposes of clarity, there will be one Cargill Hedge Price for each ProPricing MarketPro selection. [Emphasis in original.]

"B. **ProPricing MarketPro Selections:** Bushel Quantity  
Brock and Associates 5,000 bushels"

The addendum further provided that, "Seller shall set the basis by the earlier of the first date of delivery of any portion of the Bushel Quantity or day prior to the first day of the futures reference month." The addendum established "Chicago November 2002 Soybeans" as the futures reference month. The addendum also established a minimum futures price of \$4 per bushel; service fees of 7 cents per bushel; and under certain circumstances, a performance incentive that would apply.

Cargill alleged that following Anderson Farms' failure to deliver grain under the contract by the Nov. 30, 2002 deadline, it contacted Anderson Farms on Dec. 2, 2002 (the following Monday). After allegedly confirming that Anderson Farms did not intend to deliver

grain under the contract, Cargill stated that it cancelled the contract as of the close of business on Dec. 3, 2002 based upon a Sept. 30, 2002 pricing date and \$4.2075-per-bushel futures price. In this arbitration case, Cargill sought \$8,312.50 in damages against Anderson Farms, representing the difference between the contracted price (the Sept. 30, 2002 Chicago soybean price for Brock and Associates, minus the service fee) and the market price as of the date of cancellation.

Anderson Farms contested Cargill's price level of \$4.2075 per bushel. Anderson Farms argued that this price level represented

a very low level for the Jan. 1 to Sept. 27, 2002 period, over which Anderson Farms said it expected the grain to be priced. Anderson Farms stated that it requested, but did not receive, an explanation from Cargill.

In its reply arguments, Cargill responded that it priced the grain after expiration of the Oct. 1, 2002 pricing deadline under the terms of the contract and pricing addendum. Cargill further contended that Anderson Farms' understanding of the pricing of this transaction was evidenced by Anderson Farms' signing of a pricing confirmation for a separate but similar contract for corn, in which the commodity prices had moved in a favorable direction.

## The Decision

The arbitrators first determined that there appeared to be no dispute between the parties over the validity and binding nature of the contract and pricing addendum as signed by both Cargill's and Anderson Farms' representatives. The arbitrators further determined there was no disagreement between the parties regarding whether any grain was delivered or attempted to be delivered under the contract. Rather, the dispute involved the pricing of the soybeans that would have been delivered under the contract.

The arbitrators thoroughly considered the terms of the contract and addendum, as well as the parties' arguments. In particular, the arbitrators considered Anderson Farms' claims that Cargill ultimately sold the grain at a "very low" level. Based upon the parties' submissions, the arbitrators concluded that Anderson Farms failed to establish a final price under the contract, and that Cargill did so only after expiration of the designated pricing deadline specified in the contract. Therefore, the arbitrators concluded that Cargill acted in accordance with the terms of the contract and pricing addendum.

The arbitrators further determined that NGFA Grain Trade Rule 28 [Failure to Perform] governed in this dispute. Rule 28(A) [Seller's Non-Performance] provides the following:

*"If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone and confirmed in writing. The Buyer shall then, at once elect either to:*

*"(1) agree with the Seller upon an extension of the contract, or*

*"(2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract, or*

*"(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.*

*"If the Seller fails to notify the Buyer of his inability to complete the contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to:*

*"(1) agree with the Seller upon an extension of the contract, or*

*"(2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or*

*"(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day."*

The arbitrators concluded that Cargill complied with Grain Trade Rule 28(A), with proper notice to Anderson Farms and cancellation of the contract. Regarding damages, the arbitrators agreed that Dec. 3, 2002 was the correct contract cancellation date. However, based upon the documentation provided in this case, the arbitrators could not ascertain and evaluate the basis upon which Cargill had calculated a futures market price entitling it to a total amount due from Anderson Farms of \$8,312.50. The arbitrators consequently applied the November-January futures price spread for that year as of Oct. 31 (the first delivery date), and calculated a difference between contract price and fair market value price that resulted in damages of \$1.45 per bushel (totaling \$7,250).

## The Award

Accordingly, the arbitrators ordered Anderson Farms to pay \$7,250 to Cargill.

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

**Al Holdren, Chair**  
President and Chief Executive Officer  
Town and Country Co-op

Ashland, Ohio  
**Robert Edwards**  
Grain Merchandiser  
Central Missouri AGRIService LLC  
Marshall, Mo.

**Brian Smith**  
Director of Risk Management  
The Scoular Company  
Overland Park, Kan.