



National Grain and Feed Association

Arbitration Decision

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March 21, 2005

Arbitration Case Number 2092

Plaintiff: Cereal Byproducts Co. d/b/a Ceres Ag Products, Mt. Prospect, Ill.

Defendant: DeBruce Grain Inc., Kansas City, Mo.

Statement of the Case

This case involved the purchase of five rail cars of U.S. No. 2 yellow corn by Cereal Byproducts Company d/b/a Ceres Ag Products ("Ceres Ag") from DeBruce Grain Inc. ("DeBruce").

The arbitrators observed the following chain of events involved in this dispute:

1. Both the purchase contract confirmation (Ceres number 11002008) and sale contract confirmation (DeBruce contract number SC776772) mirrored each other with the exception of payment terms.
2. Shipment of all five rail cars was made on an order bill of lading consigned to DeBruce, with Rio Grande Milling as the "Notify Party" upon arrival at the Burlington Northern Santa Fe (BNSF) rail station in Mesquite, N.M.
3. Ceres Ag was not designated on the order bill of lading as a "Care of Party."
4. All five rail cars were reported empty on the BNSF at Mesquite, N.M., on Feb 1, 2002, after having been placed two days earlier (on Jan 30, 2002).
5. On Feb 11, 2002, Ceres Ag allegedly requested from DeBruce that the order bill of lading be endorsed to Ceres Ag's account.
6. Eight days later (Feb. 19, 2002), Ceres Ag issued a mailed check to DeBruce.
7. The check cleared DeBruce's bank on Feb. 25, 2002, and DeBruce released all five rail cars by surrendering lading to the BNSF.
8. Rio Grande Milling filed for bankruptcy 45 days later – on April 11, 2002.
9. Ceres Ag filed claims with BNSF on April 18, and again on June 7, 2002, which were rejected.
10. Ceres Ag filed a civil action on May 29, 2003, against DeBruce for a claimed amount of \$52,236.01.
11. The civil court ordered the suit to arbitration under the NGFA Arbitration Rules on March 23, 2004.

The Decision

The arbitrators' deliberations centered upon the NGFA Trade Rules and their application to the facts and issues in dispute.

The arbitrators first considered NGFA Grain Trade Rule 20 [*Bills of Lading - Rail and Barge*] and NGFA Grain Trade Rule 17 [*Billing Instructions*]. The arbitrators concluded that there was no irregularity under Grain Trade Rule 20 or other indication of an incorrect or invalid bill of lading in this case. The arbitrators also determined that there were no demurrage or additional charges warranted under that rule.

The arbitrators further concluded that there was no evidence that Ceres Ag issued proper instructions for the bill of lading as mandated under Grain Trade Rule 17. Ceres Ag was not listed as a "Care of Party" on the bill of lading. Ceres Ag did not request a change in those billing instructions from the time of shipment to the time of its arrival at Mesquite, N.M. DeBruce instructed that the shipment be made from its shipper on an order bill of lading

to secure payment from Ceres. The arbitrators concluded that at no time prior to Feb. 11, 2002 did Ceres Ag request that the bill of lading be delivered to it. Nor was there any request issued for a contractual change in billing terms between Ceres Ag and DeBruce.

Next, the arbitrators considered NGFA Grain Trade Rule 6 [*Passing of Title as Well as Risk of Loss and/or Damage*], which states that on contracts delivered by rail:

“Unless otherwise agreed, title, as well as risk of loss and/or damage, passes to the Buyer...when the conveyance is constructively placed or otherwise made available at the Buyer’s original destination.”

Based upon the evidence presented by the parties in the case, the arbitrators determined that all five rail cars arrived on Jan. 30, 2002, and were reported empty on Feb. 1. The arbitrators decided that at that point, any risk of loss passed to Ceres Ag with regard to its status as the seller to Rio Grande Milling. Ten days later, Ceres Ag allegedly requested by facsimile from DeBruce that the order bill of lading be endorsed and surrendered to Ceres Ag. The parties presented considerable arguments regarding the validity of that facsimile and whether it was ever sent or received. Based upon the evidence and arguments presented, the arbitrators were unable to confirm whether the message was or was not sent. The arbitrators concluded that, in any event, the message was irrelevant since the request was made outside the transaction’s original contractual terms.

The arbitrators then also considered NGFA Grain Trade Rule 22 [*Payment that is Conditioned on Presentation of Original Drafts and/or Invoices*]. The arbitrators determined that there was no violation of NGFA Grain Trade Rule 22, in that DeBruce secured its interest for payment with an order bill of lading consigned to DeBruce (not to Ceres Ag), and thence surrendered the bill of lading to the railroad having been paid by Ceres Ag. Further, the arbitrators concluded that this same pattern of transactions on order bill of ladings existed between the parties for several exact or substantially similar transactions prior to this dispute. Ceres Ag did not object to the surrender of the lading. Then, fully eight days later without communicating in any way with DeBruce, Ceres Ag mailed a check in payment for the five rail cars of corn. For an additional 45 days (until Ceres Ag’s customer Rio Grande Milling declared bankruptcy), Ceres Ag did not ask for or communicate any need for the bill of lading that already had been surrendered.

For these reasons, the arbitrators decided in favor of DeBruce, and rejected the claim of Ceres Ag for the amount of \$52,978.37.

The arbitrators also decided in favor of DeBruce in the amount of \$8,998.49 for legal fees incurred in the civil court action brought by Ceres Ag. In this regard, NGFA Grain Trade Rule 29 [*Arbitration*] states as follows:

“Where a transaction is made subject to these rules in whole or in part, whether by express contractual reference or by reason of membership in this Association, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through arbitration proceedings before the NGFA pursuant to the NGFA Arbitration rules; provided, however, that at least one party to the transaction must be a NGFA member entitled to arbitrate disputes under the NGFA Arbitration rules.”

Ceres Ag pursued this dispute in a civil court action even though both the purchase and sale confirmation contracts referenced the NGFA Trade Rules and NGFA Arbitration as the correct venue for dispute resolution in the first instance. By doing so, Ceres Ag’s actions caused unnecessary legal expenses to DeBruce prior to complying with the NGFA arbitration process.

The Award

Accordingly, the arbitrators denied Ceres Ag’s claim and ordered it to pay \$8,998.49 to DeBruce.

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

Eric T. Perry, Chair
Director, Ingredient Procurement Western Operations
Murphy Farms LLC
Ames, Iowa

Victor A. Oberting, Jr.
President
Interstate Commodities Inc.
Troy, N.Y.

Jerome T. Rowe
Manager
Heritage Grain Cooperative
Dalton City, Ill.