



National Grain and Feed Association

# Arbitration Decision

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## Arbitration Case Number 2104

**Plaintiff:** Fred L. Hostetler, d/b/a Triple "D" Farms, London, Ohio

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

### Statement of the Case

This case involved two basic disputes over the alleged validity of various contracts entered into over several months for the delivery of grain between Fred L. Hostetler, d/b/a Triple "D" Farms, ("Hostetler") and Cargill Inc. ("Cargill").

The first dispute concerned standard forward contracts for the delivery of soybeans during the fall of 2003. According to Hostetler, the parties entered into four contracts for a total of 55,000 bushels of soybeans. Hostetler alleged that he completed delivery on all four contracts, but was not properly paid. Cargill, on the other hand, claimed that the parties entered into a total of five soybean contracts, and that Hostetler failed to complete delivery. Hostetler maintained that the other contract was not valid, and that the bushels applied to that contract were improper and should have been priced at the then-prevailing market price.

The second dispute concerned two "Pro-Pricing" contracts – one for 50,000 bushels of corn and the other for 30,000 bushels of soybeans. Hostetler stated that both Pro-Pricing contracts were discussed, but claimed no such contracts were ever entered into by the parties. Although he received both contracts in the mail from Cargill, Hostetler claimed that they were sent about 21 days after the parties' discussion, and that they were simply an offer to contract.

With respect to the first dispute involving standard forward contracts, both Hostetler and Cargill agreed on the validity of four of the five contracts, as follows:

- ▶ The first contract – number 38172, dated Aug. 18, 2003 – provided for delivery of 20,000 bushels of soybeans on or before Oct. 31, 2003. Hostetler did not sign and return the confirmation for this contract to Cargill, but delivered the soybeans against this contract and Cargill paid him in full. This contract was not in dispute.
- ▶ The second contract – number 38398, dated Sept. 8, 2003 – provided for delivery of 10,000 bushels of soybeans on or before

Oct. 31, 2003. Hostetler did not sign and return the confirmation for this contract to Cargill, but delivered the soybeans against this contract and Cargill paid him in full. This contract was not in dispute.

- ▶ The third contract – number 38458, dated Sept. 11, 2003 – provided for delivery of 15,000 bushels of soybeans on or before Oct. 31, 2003. Hostetler did not sign and return the confirmation for this contract to Cargill, but delivered the soybeans against this contract and Cargill paid him in full. This contract was not in dispute.
- ▶ The fourth contract – number 38536, dated Sept. 18, 2003 – provided for delivery of 20,000 bushels of soybeans on or before Oct. 31, 2003. Hostetler did not sign and return the confirmation for this contract to Cargill. Hostetler delivered soybeans to Cargill, which Cargill applied to this contract and paid Hostetler. Hostetler denied entering into this contract.
- ▶ The fifth contract – number 38563, dated Sept. 22, 2003 – provided for delivery of 10,000 bushels of soybeans on or before Nov. 30, 2003. Hostetler did sign and return the confirmation for this contract to Cargill. Hostetler did not dispute the validity of this contract. Rather, Hostetler claimed that deliveries against this contract were misapplied to the contract that was in dispute – contract number 38536.

As a result of the alleged misapplications, Hostetler claimed damages of \$77,755.19, plus costs and interest.

With respect to the second dispute, Cargill contended that Hostetler entered into the two Pro-Pricing contracts, dated Dec. 17, 2002, for 50,000 bushels of corn and 30,000 bushels of soybeans. Hostetler argued that he never entered into these contracts and that they simply were intended to be offers from Cargill. In addition, Hostetler maintained that if he had entered into these Pro-Pricing contracts through an oral agreement, Cargill should have sent a

confirmation “not later than the close of the business day following the date of trade” in accordance with NGFA Grain Trade Rule 3. Hostetler claimed that he did not receive any confirmations related to these contracts until 21 days later, and Hostetler noted that Cargill did not dispute the timing of the sending of the contract confirmations.

However, Cargill argued that NGFA Grain Trade Rule 3 applies to both the buyer and the seller, and that both parties are equally obligated to send out confirmations by the close of the next business day following the trade. Cargill further contended that

NGFA Grain Trade Rule 3 requires a party in receipt of a confirmation with terms to which it objects, to so notify the sending party by telephone and in writing of any objections. Cargill claimed that no objections to the contract confirmations were ever made by Hostetler.

As a result of Hostetler’s alleged failure to deliver on the five standard contracts and the two Pro-Pricing contracts, Cargill claimed damages of \$71,094.84, on which it assessed an offset of \$52,001 that reflected settlement amounts for eight truckloads of soybeans delivered on Nov. 3, 2003. After accounting for the offset, the balance sought by Cargill in damages was \$19,093.84, plus interest.

## The Decision

The arbitrators determined that NGFA Grain Trade Rule 3 applied to the dispute involved in this case. NGFA Grain Trade Rule 3(A) [Confirmation of Contracts] provides in its entirety as follows:

*“Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade, or an agreed amendment, setting forth the specifications as agreed upon in the original articles of trade or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any material differences, shall immediately notify the other party to the contract, by telephone and confirm by written communication. In the case of minor differences, notification may be by either telephone or written communication.”*

The arbitrators examined closely the facts and arguments presented by both parties. The arbitrators noted the long history of business between the parties, including the apparent frequency of contracts between them for which confirmations neither were signed nor returned by Hostetler, and yet delivery occurred.

The arbitrators noted that Hostetler’s main argument in reference to the Pro-Pricing contracts was his belief that they were simply an offer to contract grain, not an actual contract. As a secondary defense, Hostetler referred to the alleged un-timeliness of Cargill’s confirmation. Although NGFA Grain Trade Rule 3(A)

provides some support for Hostetler’s contention that Cargill’s confirmation was untimely, the arbitrators determined that Hostetler failed to consider the remainder of Rule 3(A) and the responsibility it places on both parties to notify the other party of any “material differences” upon receipt of the confirmation. Simply put, the arbitrators concluded that if Hostetler intended that these contracts not be valid, no damages would have been incurred if he had followed the simple rule of providing notification to Cargill.

Regarding the forward contract in dispute (contract number 38536), the arbitrators closely examined the arguments of both parties concerning Hostetler’s offer to contract soybeans. Both parties agreed that Hostetler placed an offer to sell soybeans. Although Hostetler claimed the offer was good only for that day (Sept. 15, 2003), the arbitrators concluded that the offer remained open and was appropriately filled on Sept. 18, 2003, and that a contract confirmation subsequently was provided to Hostetler in accordance with NGFA Grain Trade Rule 3. The arbitrators further concluded that Hostetler also was bound by Grain Trade Rule 3, in that his failure to notify Cargill of any material differences upon receipt of the confirmation demonstrated his acceptance of the contract.

As a whole, the arbitrators concluded that both of the contractual disputes could have been avoided if the parties had more closely followed NGFA Grain Trade Rule 3. The arbitrators determined, however, that Hostetler’s failure to appropriately notify Cargill of any differences or objections when he received the contract confirmations directly resulted in the damages incurred.

## The Award

The arbitrators, therefore, ordered Fred L. Hostetler, d/b/a Triple “D” Farms, to pay the amount of \$19,093.84, plus interest at an annual percentage rate of 7.5 percent from Jan. 1, 2004 until paid.

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

**Todd Gerdes, Chair**  
Specialty Grains Manager  
Aurora Cooperative  
Aurora, Neb.

**Brad Schultz**  
Vice President  
Lansing Trade Group LLC  
Overland Park, Kan.

**Rick Unrein**  
President and Chief Executive Officer  
Grainland Cooperative  
Haxtun, Colo.