



National Grain and Feed Association

# Arbitration Decision

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March 2, 2006

## Arbitration Case Number 2122

**Plaintiff:** FGDI LLC, Bowling Green, Ohio  
**Defendant:** Central States Enterprises Inc., Heathrow, Fla.

## Arbitration Case Number 2122-B

**Third-Party Plaintiff:** FGDI LLC, Bowling Green, Ohio  
**Third-Party Defendant:** Michigan Agricultural Commodities Inc. Lansing, Mich.

### STATEMENT OF THE CASE

On June 1, 2004, FGDI LLC sold one jumbo 50-car train of corn to Central States Enterprises Inc. (CSE) for shipment during the last half of October 2004 (FGDI contract number 16290/CSE contract number 37246). This contract was traded f.o.b. Columbus, Ohio, to include short line applications and Bonlee, N. C., freight spreads.

On Aug. 20, 2004, CSE entered into a contract with Michigan Agricultural Commodities Inc. (MAC) for the sale of 200,000 bushels of corn (CSE contract number 37575/MAC contract number 0122121), which included the same provisions for f.o.b. Columbus and Bonlee freight spreads as in CSE's contract with FGDI.

On Oct. 25, 2004, the train was loaded at South Charleston, Ohio, and billed according to CSE's instructions. FGDI then verified through the broker confirming the trade that the Bonlee freight spread between South Charleston and Columbus was

\$0.0084-per-bushel. FGDI applied this discount on its invoices to CSE, which CSE paid, less an additional \$0.0386-per-bushel (\$135-per-car) switching charge that had been deducted by MAC.

MAC contended that the \$135-per-car unabsorbed switch charge applied by the Indiana & Ohio Central Railroad was deducted properly in addition to the Bonlee freight spread according to industry standard trade practices. FGDI and CSE argued that the terms of the contract provided for only Bonlee freight spreads, notwithstanding the location where the final buyer accepted delivery of the train.

FGDI filed this arbitration case against CSE to recover the total amount of \$6,862.73 deducted from FGDI's invoice, and requested interest and arbitration-related fees. CSE, in turn, filed its own arbitration action against MAC to recover the \$6,862.73 deducted from CSE's invoice, plus interest and fees.

### THE DECISION

The arbitrators closely reviewed the facts, documents and arguments asserted by all the parties. The arbitrators considered NGFA Grain Trade Rules 1 (Trade), 2 (Brokers), 3 (Confirmation of Contracts), and 4 (Alteration of Contract) with respect to the contracts at issue in this case. In accordance with these trading rules, the arbitrators decided that each party clearly had stated the conditions to apply in its respective contracts. The arbitrators determined that there was no mention in any of the contracts of a \$135-per-car switch charge to be paid by any of the parties.

NGFA Grain Trade Rule 4 clearly states that specifications of a contract cannot be altered or amended subsequently without the express consent of both the buyer and seller, and any alterations mutually agreed upon between the buyer and seller must be confirmed immediately by both parties in writing. The arbitrators concluded that because no written amendments to the contracts were presented, the original contracts spoke clearly to the application of Bonlee freight spreads of \$0.0084-per-bushel, which were confirmed by each party and provided to both CSE and MAC.

## THE AWARD

The arbitrators, therefore, awarded the following: Central States Enterprises Inc. is to pay to the order of FGDILLC the amount of \$6,862.73, and Michigan Agricultural Commodities Inc. is to pay to the order of Central States Enterprises Inc. the amount of \$6,862.73. The arbitrators also denied FGDI's and CSE's claims for unspecified interest and arbitration fees.

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

**Jack Goldfield, *Chair***

President

Nathan Segal & Co. Inc.

Houston, Texas

**Richard T. Erickson**

President

La Budde Group

Grafton, Wis.

**Randy Neumayer**

Senior Vice President, Transportation

Archer Daniel Midlands Co.

Decatur, Ill.