



National Grain and Feed Association

Arbitration Decision

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May 24, 2007

Arbitration Case Numbers 2137 and 2138

Plaintiff: Michigan Agricultural Commodities Inc., Lansing, Mich.

Defendant: Canadian National Railway Co., Montreal, Quebec, Canada

Statement of the Case

The central issue in this dispute was whether a contract had been offered and accepted between the parties – Canadian National Railway Co. (“CN”) and Michigan Agricultural Commodities Inc. (“MAC”) – for the shipment of soybeans and corn in the summer of 2004.

At the crux of the dispute was an allegation by MAC that CN on May 27, 2004 had tendered an offer of a contract to MAC, which MAC said it had accepted.

The Decision

The arbitrators reviewed closely the submissions of both parties. In particular, the arbitrators examined carefully the written communications between the two parties immediately prior to the date in question, as well as subsequent communications between the parties.

After review, the arbitrators concluded that a contract was not offered and accepted as alleged by MAC based primarily upon key evidentiary communications:

◆ The first such communication occurred on May 28, 2004, the day following the date on which MAC alleged a contract had been created. In written communication between the parties on May 28, MAC responded to CN’s initial offer and CN replied the same day. The arbitrators determined that the language contained in this written communication demonstrated that CN merely was negotiating, indicating a willingness to change its previous day’s offer by stating specifically that it “*would be willing to look at any offer.*” (Exhibit B of *Defendant’s Response to Plaintiff’s First Arguments*) The arbitrators concluded that the continuing communication between the parties further demonstrated the beginnings of a contract negotiation – not a firm offer and acceptance.

◆ Second, the arbitrators cited a written communication between MAC and CN on Sept. 17, 2004, in which MAC stated that “*we are still w/out a reissued contract to Montreal/Quebec. Obviously, we need to get something in place. Our discussions to this point...*” The arbitrators determined that this acknowledgement by MAC that it still was without a contract with CN, as well as the characterization of the communications between the two parties to that date as “*discussions,*” demonstrated that MAC did not believe it possessed a final contract with CN in this matter.

On these grounds, the arbitrators denied MAC’s claim in full and denied any award to MAC.

With respect to CN’s counterclaim for MAC’s alleged failure to pay for services rendered, the arbitrators agreed with CN that the short payment on bills directly related to the dispute presented in these cases (NGFA Arbitration Case Nos. 2137 and 2138) should be corrected. The arbitrators determined that given that MAC’s primary claim was denied, MAC did owe and should pay to CN for services rendered under the prevailing rates and conditions at the time the shipments were made.

CN's counterclaim also requested an award of \$200,596.97 against MAC for non-payment of invoices and charges for shipments related to other tariffs. The arbitrators determined that this component of CN's counterclaim was not within their scope of authority to address because it did not relate to the tariff applicable to MAC's claims in these cases and would bring the total amount in dispute to a dollar value that exceeded the financial limits within the arbitrators' authority.

The arbitrators also denied CN's counterclaim request that MAC should pay for billing errors made by CN for shipments prior to the 2004-05 time period.

As a final note, the arbitrators observed that the negotiations on the October 2004–September 2005 freight tariff between MAC and CN started in May 2004. Based upon the information provided to the arbitrators in this case, there was no additional communication between the parties on this matter until September 2004. The arbitrators determined that both parties had a responsibility to make a good faith effort to renegotiate the freight tariff and either continue or discontinue their business relationship as early as possible.

The Award

Therefore, the arbitrators ordered that:

- ▶ MAC shall make an immediate payment to CN of \$250,045.93 for all amounts outstanding under CN contract number 620719-AC.
- ▶ CN's counterclaim of \$200,596.97 for amounts outstanding under invoices related to other tariffs during the 2004-05 time period is not within the arbitrators' authority in this case.
- ▶ CN's counterclaim of \$7,625 for amounts older than the 2004-05 time period was denied.
- ▶ CN's claim for interest was denied.

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

Kyle Hancock, *Chair*
Vice President, Industrial and Agricultural Products
CSX Transportation Co.
Jacksonville, Fla.

Charles Threlkeld
General Manager of Transportation
CGB Enterprises Inc.
Mandeville, La.

Ryan Warner
Western Rail Manager
Bunge North America Inc.
St. Louis, Mo.