



National Grain and Feed Association

Arbitration Decision

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September 15, 2008

Arbitration Case Number 2163

Plaintiff: Excel Co-op, Reynolds, Ind.

**Defendant/
Third-Party Plaintiff:** FGDI LLC, Bowling Green, Ohio

Third-Party Defendant: Lansing Trade Group LLC, Overland Park, Kan.

Statement of the Case

On Jan. 12, 2006, Excel Co-op (“Excel”), Reynolds, Ind., sold two 65-car unit trains of corn to Lansing Trade Group LLC (“Lansing”), Overland Park, Kan.

Lansing assigned contract number 73505 to its purchase with an April-May 2006 shipment period to apply.

On April 13, Excel billed and shipped the first of the two units (66 cars) to Mobile, Ala., with FGDI LLC designated as the receiver. The train was shipped origin weights and grades and “SE specs” to apply. This unit was sampled and graded at origin by an official grain inspector with the U.S. Department of Agriculture’s Federal Grain Inspection Service.

The train arrived at destination at 11:30 a.m. on April 18. An FGDI employee called Excel on the morning of April 19 to provide notification that, after unloading six cars, FGDI had determined the corn “to grade as sour.” Excel requested that corn contained in the remaining 60 cars be reinspected to determine its quality. Early on the morning of April 20, FGDI communicated to Lansing and Excel that the reinspection resulted in 44 of the 66 cars grading “sour.” FGDI stipulated that a 22-cents-per-bushel discount would apply to the allegedly “sour” carloads.

At noon on April 20, representatives of Lansing, Excel and FGDI conducted a teleconference. All parties appeared to agree on the facts as presented to date. Excel was provided the option of re-billing the train to another destination or accepting the 22-cents-per-bushel discount and having the train unloaded to FGDI in Mobile, Ala. At 3:50 p.m. on April 20, a representative of Excel called and instructed FGDI to unload the cars at the agreed-upon discounts.

Excel did not dispute the designation of “sour” for the bushels in dispute. Instead, in these arbitration proceedings, Excel contended that the 22-cent-per-bushel discount was “too aggressive” and “excessive by industry standards.” Excel requested a refund of 10 cents per bushel. FGDI countered that its discount was appropriate given the quantity of corn involved, which it maintained made it impossible to recondition and dry in time to load without incurring demurrage charges, and because the corn would need to be kept segregated and incur storage costs until it was in condition to load for export.

FGDI and Lansing also argued that Excel was not justified in seeking a reduction in the agreed-upon discounts after the fact.

The Decision

The arbitrators reviewed the facts as provided by the parties and summarized above, determining that the parties did not dispute the essential facts. The parties did not raise issues concerning whether the contract required a “cool-and-sweet” condition upon arrival. However, the arbitrators determined that the parties had agreed to a “cool-and-sweet” condition upon-arrival based upon their conduct after delivery. The arbitrators consequently applied NGFA

Grain Trade Rule 13 [*Condition Guaranteed on Arrival of Rail Cars*], and determined that the buyers/receivers had acted in accordance with the rule, and by agreement of the seller, upon the determination that the corn was out of condition.

For the aforementioned reasons, the arbitrators ruled in favor of FGDI and Lansing.

The Award

The arbitrators, therefore, denied the claim of Excel Coop, and no monies were awarded.

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

David Ragan, *Chair*
Product Line Manager
Archer Daniels Midland Co.
Decatur, Ill.

James Bafus
Manager
Almira Farmers Warehouse Co. Ltd.
Almira, Wash.

Joe Christopher
Senior Grain Manager
Crossroads Cooperative Association
Sidney, Neb.