



National Grain and Feed Association

Arbitration Decision

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May 8, 2008

Arbitration Case Number 2173

Plaintiff: Hansen-Mueller Co., Omaha, Neb.

Defendant: Ray-Carroll County Grain Growers, Richmond, Mo.

Statement of the Case

In 2005, Hansen-Mueller Co. (“Hansen-Mueller”) entered into a put-through agreement with Ray-Carroll County Grain Growers (“Ray-Carroll”) to handle oats exclusively for Hansen-Mueller through Ray-Carroll’s St Louis, Mo., facility.

Importantly, for purposes of this arbitration case, the agreement included a provision under 2(g) of the contract terms that stated: “RAY-CARROLL shall take a handling shrink of 1/4% of unload weight at the time of unload. RAY-CARROLL shall be responsible for any shrink over 1/4% of unload weight, as determined by certified RAY-CARROLL unload and load-out scale weights.”

In 2007, the agreement was terminated. This dispute arose at the end of the agreement when it became apparent that oats remained after Ray-Carroll had loaded out Hansen-Mueller’s entire book inventory.

Hansen-Mueller argued that because the agreement called for its oats to be stored “identity preserve(d)” and gave it exclusive rights for handling oats through this facility, then the oats that remained after load out must have been oats that it unloaded at the facility. Hansen-Mueller also argued that the “shrink clause” in provision 2(g) of the agreement referred to estimated shrink, and that if, in fact, the shrink was less than called for under the agreement, those oats should be considered part of its inventory. Hansen-Mueller claimed \$21,300 in damages, plus fees.

Ray-Carroll countered that the shrink factor was applied to the bushels immediately upon unload and said it provided Hansen-Mueller with a daily accounting of its inventory. Ray-Carroll claimed that when the final book bushels were loaded out, a contract was entered into with Hansen-Mueller to purchase the inventory balance that remained on the books. Ray-Carroll argued that at that time, its obligations to Hansen-Mueller were fulfilled.

The Decision

In deciding the case, the arbitrators first determined that no NGFA Trade Rules specifically applied to govern put-through agreements. The arbitrators also decided that not in dispute were the weights actually used by Ray-Carroll or whether Hansen-Mueller’s bushels were in fact adjusted by 1/4 percent at the time of unload.

The arbitrators then examined the agreement between the parties for an indication of the shrink allowances in dispute. The arbitrators concluded that the terms of the shrink clause in 2(g) were dispositive on this issue, clearly stating that Ray-Carroll “shall take a handling shrink of 1/4% of unload weight at the time of unload.” Ray-Carroll reduced Hansen-Mueller’s inventories as unloads were received. The arbitrators determined that

the agreement between the parties did not address what to do if the shrink was less than 1/4 percent, finding that the argument that clause 2g only referred to an estimate of actual shrink had no merit. Instead, in reaching their decision, the arbitrators relied upon the exact terms of clause 2(g), which indicated that the 1/4 percent shrink was to be applied automatically at unload. The arbitrators concluded that Ray-Carroll did just that, thereafter adjusting its inventories accordingly. The arbitrators also examined the exclusivity and identity-preserved storage clauses in the agreement, but concluded that neither of these clauses addressed shrink or otherwise had any bearing on this dispute.

For these reasons, the arbitrators ruled in favor of Ray-Carroll.

The Award

No damages were awarded.

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

Rick Cole, *Chair*
Director, Grain Operations
General Mills Inc.
Minneapolis, Minn.

Elizabeth Armstrong
Merchant
London Agricultural Commodities Inc.
London, ON, Canada

Jim Lee
Grain Merchandiser
Beachner Grain Inc.
St. Paul, Kan.