



National Grain and Feed Association

Arbitration Decision

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May 21, 2009

Arbitration Case Number 2194

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Clint Cramton, Tescott, Kan.

Statement of the Case

On Dec. 21, 2006, Cargill Inc. (Cargill) and Clint Cramton (Cramton) entered into a “no basis established” contract for 10,000 bushels of U.S. No. 1 hard red winter wheat (Cargill Contract No. SALI-AH-57592) to be delivered to Cargill between June 15 and July 15, 2007.

Subsequently, on Feb. 15, 2007, Cargill and Cramton entered into a “no basis established” contract for 1,400 bushels of U.S. No. 1 yellow soybeans (Cargill Contract No. SALI-AH-58348) to be delivered to Cargill between Oct. 1 and Nov. 28, 2007.

Cramton and an employee of Cargill both signed each contract confirmation soon after the verbal agreements were made.

Sometime prior to July 15, 2007, Cramton delivered 3,715.71 bushels applied against the wheat contract. Cramton made no deliveries on the soybean contract.

Cargill’s Position: Cargill stated that, at the time, it was not concerned about Cramton’s alleged failure to deliver all of the contracted wheat because there were widespread weather-related wheat harvest delays during June and July 2007.

Beginning in early August 2007, Cargill said it made several attempts to contact Cramton to resolve the matter. On Aug. 6, 2007, Cargill said one of its representatives spoke with Cramton. Cargill claimed that, during that conversation, Cramton indicated he was considering some alternatives for fulfilling his obligation to deliver wheat to Cargill and would advise Cargill of his intentions by the end of the week. According to Cargill, Cramton subsequently failed to do so. Over the next few weeks, Cargill said its representatives made repeated attempts to contact Cramton. On Sept. 6, 2007, Cargill successfully contacted Cramton and scheduled a meeting with him at Cargill’s elevator on Sept. 10. Cargill said Cramton failed to appear for the meeting. Cargill then contacted Cramton on Sept. 18. Cargill stated that,

during this conversation, Cramton expressed reluctance to cancel the wheat contract. Cargill’s representative offered to extend the delivery date to Nov. 30, 2007. According to Cargill, Cramton agreed to the extension. Cargill sent a contract amendment to Cramton confirming extension of delivery time to Nov. 30, 2007.

On Oct. 9, 2007, Cramton visited Cargill’s elevator and stated that his attorney had instructed him not to sign the contract amendment extending the delivery time. Cramton also stated that instead, he would like to cancel the wheat contract as of July 15, 2007. Cargill said that, after some discussion, its representative indicated that Cargill would be willing to cancel the wheat contract as of Oct. 9, 2007, but not as of July 15. Cramton did not agree. Further, Cargill said Cramton indicated that until the wheat contract was resolved, he was unwilling to fulfill his obligation to deliver on the soybean contract. Cargill said Cramton called Cargill’s elevator on Oct. 10, again insisting the wheat contract be resolved by cancellation as of July 15, 2007, and reiterating his refusal to deliver on the soybean contract until the wheat contract was resolved to his satisfaction. Cargill’s representative said it was willing to cancel the wheat contract effective Oct. 10, but not as of July 15, 2007. Cargill said that Cramton replied that he would take his soybeans elsewhere and hung up the phone.

On Oct. 10, Cargill canceled the remaining balance of the wheat contract and wrote to Cramton indicating the claimed amount due to Cargill for the cost of the cancellation: \$21,130.93.

On Oct. 11, Cargill sent Cramton a demand for adequate assurance with respect to the soybean contract, inquiring as to his intentions to deliver 1,400 bushels against his obligation. Cargill’s letter stated that, as of that date, the difference between the contract value and the current market value was \$2,289 due Cargill. Cargill’s letter also requested that Cramton

give Cargill assurance by Oct. 16 of his intentions to deliver against his soybean contract. Cargill did not receive a response from Cramton by Oct. 16; thus, the soybean contract was canceled at the market close on that date, resulting in \$2,590 due Cargill.

Over the next few weeks, Cargill received two letters from Cramton's attorney. The first claimed that Cramton had asked that the wheat contract be canceled at least twice prior to July 15, 2007 because of significant weather-related crop damage. Cramton's attorney stated that Cargill had discouraged Cramton from canceling the contract, and that Cargill had refused Cramton's request. Cargill acknowledged that other producers had advised of production shortfalls, but that Cargill and the other affected producers had reached mutually agreeable solutions. Cargill argued further that Cramton's claim that he attempted to cancel the wheat contract prior to July 15 was inconsistent with his comments and actions on multiple occasions in August and September. In the letter, Cramton's attorney offered to settle the wheat contract for \$5,593.02 and the soybean contract for \$2,380. Cargill refused this offer on Oct. 25.

The second letter from Cramton's attorney, dated Nov. 21, 2007, contained a check for \$7,973.02 and a statement that the check represented "payment and satisfaction, in full, of all claims that Cargill might have against Mr. Cramton in connection with the...contracts." Cargill refused this offer and returned the check on Nov. 30.

Cargill argued that its actions in canceling the contracts were in accordance with paragraphs 10 and 11 of the contracts. In summary, these provisions outline the buyer's rights to: 1) demand assurance of seller's full performance and buyer's available remedies if the seller fails to provide adequate assurance within 48 hours (paragraph 10); and 2) cancel the contracts due to any breach or default of the contract terms or conditions by the seller (paragraph 11). In addition, paragraph 1 of the contracts stated that they are subject to the Trade Rules of the National Grain and Feed Association. In particular, Cargill referenced NGFA Trade Rule 28 [*Failure to Perform*], paragraph (A) [*Seller's Non-Performance*]. Cargill contended that Cramton did not notify Cargill of his inability to deliver under the contracts, despite repeated attempts by Cargill to ascertain Cramton's intentions with respect to delivery. Consequently, Cargill said it canceled the wheat contract as of Oct. 10 – the date that Cramton advised Cargill of his refusal to deliver. Similarly, Cargill canceled the soybean contract as of Oct. 16 – the date Cargill requested assurance from Cramton as to his intentions to deliver.

Cramton's Position in Response to Cargill's Claims: Cramton did not dispute that he breached the wheat and soybean contracts. The sole dispute pertained to the effective cancellation date of the wheat contract and consequently, the amount of damages Cargill was entitled to recover.

In his initial arguments submitted in this case, Cramton stated that he canceled the wheat contract in April 2007. He alleged that Cargill refused to honor the cancellation so that it could increase the damages associated with contract cancellations. On this basis, Cramton maintained that his liability under the wheat contract would be \$5,593.02 (\$5.94 July 16, 2007 price less \$5.05 contract price multiplied by 6,284.29 bushels). Cramton did not dispute the amount of damages owed to Cargill for the soybean contract: \$2,380.

On or about April 10, 2007, a hard freeze occurred in central Kansas which caused significant damage to wheat crops (including Cramton's) in that area. Then, in early May 2007, central Kansas experienced severe flooding, causing further significant damage to wheat production (including Cramton's.)

Cramton provided telephone records showing that he contacted Cargill on April 10 and May 11, 2007. He stated that the purpose of the calls was to discuss how the wheat contract might be adversely affected by the hard freeze and the flooding. Cramton stated that each time, Cargill officials told him "not to worry about it" and that the best course of action would be for the parties to "wait and see what happens." According to the phone records, the April 10 call was one minute in duration and the May 11 call was two minutes long. Cramton said he contacted Cargill again on June 15, 2007, stating that he was not going to be able to deliver the full 10,000 bushels on the wheat contract because of crop damage resulting from the freeze and flooding. The phone records indicate that this call lasted four minutes.

According to Cramton, at no time did he agree to extend the delivery period for the wheat contract. Nor did he initial or sign Cargill's handwritten amendment to the contract indicating that the contract delivery was to be extended to Nov. 30.

Cramton argued that the pivotal issue in the case involved the date the wheat contract was breached. He contended that, because 6,284.29 bushels were not delivered prior to July 15, 2007, Cargill "had actual notice on July 15, 2007 that Cramton had indeed breached the wheat contract." He further argued that "Cargill knew, or should have known, on July 15, 2007 (at the latest) that Cramton had failed to perform his obligations under the wheat contract" and would not be able to fully perform those delivery obligations. Cargill, therefore, either should have "covered" by buying in the defaulted portion of the wheat contract, or canceled the default portion of the wheat contract and measured their damages as of the close of business on July 16, 2007, Cramton asserted.

Cramton maintained that Cargill violated NGFA Grain Trade Rule 4 by unilaterally attempting to alter the delivery date of the wheat contract. Further, Cramton disputed the claim that he failed to comply with NGFA Grain Trade Rule 28. Cramton alleged that Cargill took unfair advantage of the situation to arbitrarily manipulate the measuring date for damages.

Damage Claims

The wheat contract price was \$4.93 per bushel and the Oct. 10, 2007 cancellation price was calculated at \$8.1925 per bushel, plus a cancellation charge of 10 cents per bushel. As a result, Cargill claimed damages totaling \$21,130.93 for the undelivered portion of the wheat contract.

Meanwhile, the basis for the soybean contract had not yet been set, but the futures price was \$8.075 per bushel. On Oct. 16, 2007 the futures price used for cancellation was \$9.775 per bushel,

plus a 15-cent-per-bushel cancellation charge. Cargill's claim for damages on the soybean contract was \$2,590. Accordingly, Cargill requested a judgment in its favor totaling \$23,720.93, plus accrued interest.

Cramton requested that Cargill be awarded \$5,593.02 in damages for the wheat contract, and \$2,380 in damages for the soybean contract, totaling \$7,973.02. Cramton argued that Cargill was not entitled to interest.

The Decision

The arbitrators determined that Cargill acted properly in its handling of Cramton's contracts and cancellations.

Cramton's principle contention was that Cargill should have canceled the wheat contract as of July 15, 2007, the last day of the original contract delivery period. Cramton cited NGFA Grain Trade Rule 28 in his argument. But, in so doing, the arbitrators concluded that Cramton overlooked a key portion of Rule 28, which states:

"If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the liability of the Seller shall continue until the Buyer, by exercise of due diligence, can determine whether the Seller has defaulted...."

As the rule states, Cramton, the seller, still was liable for completing the contract until either: 1) Cramton notified the buyer of his inability to fulfill his obligation, or 2) Cargill, the buyer, by exercising due diligence, could determine whether Cramton intended to meet his obligation or intended to default. The arbitrators determined that based upon the evidence provided in this case, Oct. 9, 2007 was the first date on which Cramton stated his desire to cancel the wheat contract. Thereafter, Cargill acted according to NGFA Trade Rule 28(A) and canceled the defaulted portion of the contract.

Cramton also stated that he canceled the wheat contract in April 2007, "and that Cargill simply refused to honor the cancellation so it could run up its damages." He further stated that he attempted to cancel the wheat contract in May and June 2007.

The arbitrators observed that NGFA Grain Trade Rule 28 states, "If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone and confirmed in writing." Based upon the evidence provided in this case, Cramton failed to confirm in writing any notice regarding his inability to complete the contract at the time. The arbitrators noted that, according to Cramton's phone records, the April, May and June phone conversations were only one, two and four minutes long, respectively. Given the short duration of the calls, the arbitrators questioned whether there was sufficient time to discuss the issue of contract cancellation. The arbitrators also questioned whether contract cancellations occurred in April, May or June, since Cramton claimed July 15, 2007 as the proper date for establishing the contract cancellation price.

The arbitrators noted Cramton's assertion that Cargill unilaterally extended the delivery period to November without his consent. Cargill stated that Cramton agreed to the extension verbally on Sept. 18, 2007, and Cargill issued an amended contract. On Oct. 9, Cramton stated that his attorney instructed him not to sign the amended contract. However, according to NGFA Grain Trade Rules, Cramton's failure to immediately respond to Cargill's amendment made it binding upon both parties. Specifically, NGFA Grain Trade Rule 3(B) states: "If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received."

The Award

The arbitrators ruled in favor of the plaintiff, Cargill Inc., and determined that the defendant, Clint Cramton, owed Cargill damages of \$23,720.93, plus interest at 7.5 percent (in accordance with NGFA Arbitration Rules Section 8) to accrue from the dates the contracts were canceled (Oct. 10, 2007 for the wheat contract and Oct. 16, 2007 for the soybean contract) until payment is made.

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

Dennis Morrison, *Chair*

Trading Manager
Integrated Grain and Milling
Fresno, Calif.

Tom Hauschel

Executive Vice President of Grain and Risk Management
Heartland Co-Operative
West Des Moines, Iowa

Jeffrey E. Myers

General Manager
Okaw Farmers Cooperative, Inc.
Arthur, Ill.