



National Grain and Feed Association

Arbitration Decision

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February 26, 2009

Arbitration Case Number 2196

Plaintiff: Leroy Harrison Jr., Hickman, Ky.

Defendant: Bunge North America Inc., St. Louis, Mo.

Statement of the Case

This case concerned contracts entered into between Leroy Harrison Jr. (Harrison), the seller, and Bunge North America Inc. (Bunge), the buyer.

The first of the contracts pertinent to this case (contract number 0097203) was entered into between Harrison and Bunge on Aug. 29, 2006, and involved the sale and purchase of yellow corn. Harrison acknowledged that he failed to complete deliveries on the corn contract.

The dispute between the parties centered upon Harrison's claim that he requested that the remainder of the corn contract be cancelled – rather than extended – versus Bunge's assertion that Harrison had never requested cancellation of this contract. Bunge alleged that it contacted Harrison several times, and that each time Harrison agreed to roll the corn contract to December 2006 delivery. Harrison argued that he never was informed of an extension of the contract and that, therefore, he never had the opportunity to object to an extension. According to Bunge, the confirmation of the change in price and contract extension was attached to the back of the settlement check for the portion of the corn that Harrison already had delivered under the contract. Harrison denied receiving this confirmation. Bunge stated that it mailed another copy of the confirmation regarding the contract change to Harrison on Nov 6, 2006, after not receiving a returned copy from Harrison of the previous confirmation.

Bunge also alleged that Harrison failed to complete delivery under the corn contract because he sought to sell the remainder at a higher price – not because he ran out of corn to deliver. According to Bunge, on Nov. 9, 2006, Harrison executed two contracts with a different buyer for yellow corn. Bunge claimed that on Dec. 13, 2006, Harrison engaged in a conversation with a Bunge representative in which Harrison allegedly stated that he had "resold" the corn to another elevator and that he would not complete delivery on the corn contract with Bunge. During

this conversation, Bunge maintained that it advised Harrison that he could either deliver the corn during December or pay the market difference, plus cancellation fees.

Bunge asserted it also advised Harrison that if he failed to choose one of these two options, Bunge would withhold the amount due out of the proceeds from a separate contract involving the purchase of soybeans from Harrison (contract number 97153). Under this separate soybean contract (number 97153), Harrison completed soybean deliveries to Bunge on Nov. 6, 2006. On Jan. 2, 2007, Bunge cancelled the corn contract. On the following day – Jan. 3, 2007 – Bunge said it sent a letter to Harrison notifying him that the corn contract had been cancelled and that he owed Bunge \$48,611.85 for the market difference on the cancelled contract representing the undelivered corn, plus cancellation fees. Harrison received the letter on Jan. 12, 2007 by certified mail. Ultimately, Harrison fully delivered in fulfillment of the soybean contract, and Bunge withheld the full amount of \$62,209.78 owed to Harrison for the soybeans as payment on the corn contract.

Harrison argued that this amount was greater than the amount that he owed to Bunge under the corn contract.

Since he claimed never to have received a notice of extension from Bunge, Harrison argued that he should be charged for the difference based upon the price of corn on Sept. 30, 2006, rather than the Dec. 31, 2006 price point used by Bunge in its invoice. Using the Sept. 30 price, Harrison would owe Bunge only \$11,438.08 (for the portion of the corn that he failed to deliver), to be subtracted from the amount that Bunge owed him for the soybean contract.

In another aspect of the contractual relationships between these two parties, Harrison in June 2007 was expected to deliver wheat to Bunge under pre-existing contract number 0097136.

During a telephone conversation between Harrison and a Bunge representative, Bunge refused to pay additional monies under the corn contract and Harrison refused to deliver wheat under contract number 0097136. Harrison allegedly stated that he had sold the wheat to another elevator. Bunge subsequently cancelled the wheat contract on July 10, 2007, and invoiced Harrison for \$14,600 under that contract.

Bunge further indicated that after deducting proceeds under the soybean contract, Harrison owed Bunge a total of \$1,002.07. Bunge sent a second letter and invoice to Harrison on Sept. 17,

2007, stating that he still owed this amount.

Harrison argued that because Bunge allegedly breached the corn and soybean contracts, he was excused from delivering on the pre-existing wheat contract. Bunge argued that its cancellation of the wheat contract and its partial cancellation of the corn contract were in accordance with NGFA Trade Rules, that Harrison had been given ample warning and opportunity to fully deliver under those contracts, and that Harrison's failure to deliver under the wheat contract was an unwarranted breach of contract.

The Decision

Based upon a complete review of the arguments and evidence presented in this case, the arbitrators determined as follows:

- ▶ Bunge acted within the contract terms, which were stated clearly in the documentation provided by the parties in this case.
- ▶ Bunge acted in accordance with the entirety of NGFA Grain Trade Rule 28(A), "Seller's Non-Performance," and Grain Trade Rule 30(B), "Buying-In."
- ▶ The documented evidence and affidavits supplied by Bunge corroborated its claims regarding communication of the cancellation of the corn contract.
- ▶ Harrison was not in the position to simply refuse to deliver

under the wheat contract. Bunge complied with all contract terms in the preceding corn and soybean contracts. The wheat contract was an individual agreement that should have been honored by Harrison. Bunge's cancellation of the wheat contract, therefore, was in accordance with contract terms.

- ▶ Any adjustment to the amount owed to Harrison under the soybean contract should be offset by the amount due from Harrison for the cancellation of the corn contract and the wheat contract.
- ▶ Pursuant to NGFA Arbitration Rule 8(m), the interest rate in this case was calculated at 7.25 percent, based upon the prime rate in effect on Dec. 15, 2007 (the date of the filing of Plaintiff's complaint in this case).

The Award

The arbitrators awarded to Bunge \$1,002.07, plus interest at a rate of 7.25 percent per annum from June 10, 2007 until paid.

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

Dean Kohlmeyer, *Chair*
Grain Manager/Merchandiser
Stateline Cooperative
Burt, Iowa

Ray Ford
Manager
C.S. Grain LLC
Camilla, Ga.

Keith Hainy
General Manager
North Central Farmers Elevator
Ipswich, S.D.