



National Grain and Feed Association

# Arbitration Decision

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October 22, 2009

## Arbitration Case Number 2216

**Plaintiff: Bunge North America Inc., St. Louis, Mo.**

**Defendant: JMD Ag Inc., Reydell, Ark.**

### Statement of the Case

Bunge North America Inc. (Bunge) requested a judgment in the amount of \$46,291.21 on a wheat contract and \$67,220 on soybeans contracts against the defendant, JMD Ag Inc. (JMD) for an alleged failure to deliver the contracted quantities.

Bunge submitted an arbitration complaint to the National Grain and Feed Association (NGFA). The complaint alleged that JMD failed to perform on duly signed Bunge purchase contract numbers 109727 (30,000 bushels of U.S. No. 2 soft red winter wheat); 109989 (8,000 bushels of U.S. No. yellow soybeans) and 110146 (10,000 bushels of U.S. No. 1 yellow soybeans).

The contract stated that it was, "SUBJECT TO RULES OF: NATIONAL GRAIN AND FEED ASSOCIATION." The contract also contained the following provision under its "GENERAL TERMS" section:

"The terms of this confirmation are subject in all respects to the rules and regulations of the exchange, board, or association designated above. If seller is not a member of said exchange, board, or association, then the rules of the National Grain and Feed Association shall govern. Buyers and Sellers agree that all disputes and controversies shall be arbitrated according to said rules and regulation, and that judgment may be entered on the arbitration award in any court of competent jurisdiction."

#### Wheat Contract:

On Sept. 25, 2006, Bunge purchased 30,000 bushels of U.S. No. 2 soft red winter wheat from JMD for delivery to Bunge's Pine Bluff, Ark., elevator between June 1, 2007 and July 31, 2007. Bunge issued purchase confirmation number 109727 for the hedge-to-arrive contract, which was duly signed by both parties; Mark Sheppard signed the contract on behalf of JMD.

On May 31, 2007, JMD delivered 1,807.02 bushels of wheat to Bunge. On June 4, 2007, the basis was established on the contract. On June 6, 2007, JMD delivered 992.56 bushels of wheat that were applied against the contract. On June 29, 2007, JMD delivered 1,194.12

bushels of wheat applied against the contract. A total of 3,993.70 bushels of wheat were delivered and applied against contract number 109727.

In mid-June 2007, Sheppard spoke with Bunge's Pine Bluff elevator manager to inform him that JMD would not have enough wheat to fulfill the remainder of its contract obligation. Bunge stated that Sheppard did not indicate how much wheat JMD would be able to deliver. According to Bunge, Sheppard asked Bunge if it would roll the wheat contract to the following year, and was advised that Bunge would not do so. Sheppard then stated that he would speak to Bunge's Southern District commercial manager. Bunge's elevator manager then discussed the contract with a Bunge grain marketing specialist to confirm that Bunge would not roll the contract forward. The elevator manager then contacted Sheppard to confirm that JMD's contract could not be rolled. The two parties discussed the options of either delivering the wheat by the end of the contract period or cancelling the contract. Sheppard stated he did not want to cancel the contract.

During the first week of July, Bunge said its elevator manager and grain marketing specialist visited Sheppard at his farm shop. During the visit, Sheppard repeated that he was going to request a meeting with Bunge's Southern District commercial manager. In early July, Sheppard traveled to the Pine Bluff elevator to discuss the status of his open contracts with Bunge's Southern District commercial manager. Another Bunge district manager also attended the meeting. Sheppard explained that he did not have enough wheat to fill the contract and also advised that he did not want to cancel the contracts.

Bunge advised Sheppard that if he did not deliver the wheat by the end of the delivery period, then Bunge would cancel the wheat contract. JMD failed to deliver the wheat by the close of business on July 31, 2007. On Aug. 1, 2007, consistent with the conversation with Sheppard, Bunge canceled the wheat contract at the close of the market. The following day, Bunge mailed, via certified mail, a letter notifying JMD of the contract cancellation. Sheppard signed

the certified mail receipt on Aug. 14, 2007. The letter included an invoice for the fees owed for cancellation, along with the market difference.

**Soybean Contracts:**

On Jan. 12, 2007, Bunge purchased 8,000 bushels of U.S. No.1 yellow soybeans from JMD for delivery to Bunge’s Pine Bluff, Ark., elevator between Oct. 1 and Nov. 30, 2007. Bunge confirmed its purchase by issuing confirmation number 109989 under a flat-price purchase; the confirmation was signed by Sheppard on behalf of JMD.

On April 12, 2007, Bunge purchased another 10,000 bushels of U.S. No. 1 yellow soybeans from JMD for delivery to Bunge’s Pine Bluff, Ark., elevator between Oct. 1 and Nov. 30, 2007. Bunge confirmed its purchase by issuing purchase confirmation number 110146; Sheppard signed this contract confirmation on behalf of JMD.

On Sept. 10, 2007, JMD established the basis on contract number 110146.

JMD failed to make any further deliveries of soybeans under soybean contract numbers 109989 and 110146 by the end of the delivery period. On Dec. 5, 2007, Bunge’s elevator manager verbally notified Sheppard that Bunge intended to cancel the contracts. On Dec. 6, 2007, Bunge’s elevator manager called Sheppard and left a message again advising Sheppard that Bunge would cancel the contracts the next day. Sheppard did not respond to the message. On Dec. 7, 2007, consistent with its notice to Sheppard, Bunge canceled the soybean contracts. On Dec. 10, 2007, Bunge sent a letter to Sheppard confirming the cancellation of the contracts, and invoiced Sheppard for the market difference and cancellation fees on the soybean contracts.

In its written arbitration response, JMD did not dispute the basic facts of the case or any of the conversations with Bunge’s representatives.

**The Decision**

Both parties entered into binding contracts. Both parties signed the contracts and the contracts specifically stated: “SUBJECT TO RULES OF NATIONAL GRAIN AND FEED ASSOCIATION.”

Sheppard was advised that the wheat contract would not be rolled forward and no attempt was made to fulfill the soybean contracts. Sheppard was advised in both instances that the contracts would be canceled when the deliveries were not made by the end of the delivery period.

In its arguments, JMD referred to weather-related conditions that arose in the fall of 2006 and spring of 2007 that affected JMD’s

planting and crop yields, as well as simultaneously occurring family-related issues that JMD claimed affected its focus on market prices. However, JMD failed to notify Bunge of any potential problems in fulfilling the contracts in a timely manner, and JMD declined to cancel the contracts through the end of the delivery period in July. JMD sought to declare *force majeure* because of production-related issues caused by a wet fall season and yields reduced by a late-season freeze.

The arbitrators determined that *force majeure* did not apply under these circumstances, including because the contracts did not provide for a declaration of *force majeure* by the seller.

**The Award**

In reviewing the damages incurred by Bunge, the arbitrators made the following awards:

▶ The arbitrators granted \$30,436.25 in damages to Bunge for the wheat contract. The arbitrators arrived at the wheat judgment based upon the following information: JMD delivered 3,993.7 bushels of wheat against contract number 109727 at a price of \$3.97 per bushel, but was only credited for \$8,681.12 by Bunge. The arbitrators determined that JMD may not have received full credit for the monetary value of the wheat delivered against the contract. The arbitrators determined that JMD should receive full monetary credit for the wheat delivered, unless reasonable discounts should apply for quality-related factors. Therefore, the arbitrators reduced Bunge’s requested judgment to provide JMD for full monetary credit for the wheat delivered.

▶ The arbitrators awarded \$67,220 in damages to Bunge for the soybean contracts.

Thus, the total award was \$97,656.25.

Based upon the information provided by the parties, the arbitrators awarded \$97,656.25 to the plaintiff, Bunge North America Inc. The arbitrators declined to award interest to Bunge, but did award Bunge its request for reimbursement of arbitration fees of \$1,424.

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

**Kent Kupfner, Chair**  
Commodity Merchant  
Columbia Grain International Inc.  
Great Falls, Mont.

**Kevin T. Walker**  
Manager  
Heritage Grain Cooperative  
Bethany, Ill.

**Kayra S. Weisbrod**  
Grain Originator  
StateLine Cooperative  
Cylinder, Iowa