



National Grain and Feed Association

Arbitration Decision

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July 16, 2009

Arbitration Case Number 2252

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

Defendant: Warren Callicutt and Wayburn Callicutt d/b/a Callicutt Farms, Holly Springs, Miss.

Statement of the Case

This case concerned a contract for 5,000 bushels of U.S. No. 1 yellow soybeans between Bunge North America Inc. (Bunge), as the buyer, and Warren Callicutt and Wayburn Callicutt d/b/a Callicutt Farms (Callicutts), as the sellers. The soybeans were to be delivered between Oct. 1 and Nov. 30, 2007.

According to Bunge, when the Callicutts canceled a separate set of corn contracts in June 2007, they expressly told Bunge not to cancel the soybean contract at issue in this case. In late November, before the end of the delivery period, Bunge allegedly inquired with the Callicutts about when to expect deliveries of the soybeans. However, the Callicutts claimed they advised Bunge to cancel the soybean contract at the same time they canceled the corn contracts in June.

Bunge owed \$1,775 to the Callicutts as a result of canceling the corn contracts. Bunge withheld this money to cover amounts that Bunge anticipated the Callicutts possibly would owe if they defaulted on the soybean contract. On a separate set of contracts for the purchase of wheat between the Callicutts and Bunge, the Callicutts delivered a portion of the wheat and defaulted on the remainder. Bunge paid Callicutt for the wheat

delivered rather than withholding additional funds because, based upon the market price for soybeans at that time, Bunge calculated that it already had withheld enough money under the corn contract. However, the price of soybeans later increased.

No soybeans were delivered during the delivery period specified under the contract, and Bunge canceled that contract on Dec. 6, 2007. Bunge contended that the Callicutts failed to provide proper written notice of a prior contract cancellation. Therefore, Bunge claimed that it was owed \$15,375, representing the market difference and cancellation fees, plus interest from Dec. 6.

The Callicutts also alleged that Bunge failed to note a change of address (from the father's address to the son's), even though they maintained they specifically had requested that the change be made. The Callicutts argued that, due to this alleged oversight, they were not properly notified of the contract cancellations by Bunge and they continued to assume that Bunge had canceled both the corn and soybean contracts in June.

The Decision

The arbitrators closely reviewed the facts of this case. The arbitrators determined that the Callicutts' claim that Bunge failed to follow their orders to cancel the soybeans contract simultaneously with canceling the corn contracts was invalid. Specifically, the arbitrators determined that the evidence and submissions provided by both parties established that Bunge's documentation process had provided the Callicutts with the proper feedback and notification related to the parties' actions

and intentions. The arbitrators also concluded that the Callicutts' claim that Bunge sent correspondence to a prior address did not relieve the Callicutts of responsibility to fulfill their contractual commitments. The arbitrators further noted that the Callicutts understood their liability to fulfill their contractual commitments given that Bunge was retaining reciprocal margins from the Callicutts' excess equity in the corn contracts.

The arbitrators determined that these facts and circumstances entitled Bunge to an award in its favor. However, the arbitrators noted that Bunge did not strictly follow protocols concerning appropriate written notification to the seller of “seller’s

default” and subsequent contract cancellation dates for performance failure. Consequently, the arbitrators’ award to Bunge did not include interest or reimbursement of arbitration fees.

The Award

The arbitrators awarded \$15,375 to Bunge.

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

Tom McLaughlin, *Chair*

Vice President/General Manager
Integrated Grain & Milling
Fresno, Calif.

William W. Doyscher

Assistant General Manager
Farmers Cooperative Elevator Co.
Hanley Falls, Minn.

Wade Entriiken

Merchandiser
Heartland Co-op
West Des Moines, Iowa