



National Grain and Feed Association

Arbitration Decision

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November 19, 2009

Arbitration Case Number 2350

Plaintiff: Keynes Bros. Inc., Circleville, Ohio

Defendant: James Harral, Circleville, Ohio

Statement of the Case

This case involved cancellation costs assessed on a contract for soft red winter wheat between Keynes Bros. Inc. (Keynes Bros.), as buyer, and Mr. James Harral (Mr. Harral), as seller.

Contract number E-1906, dated Sept. 12, 2007, between the two parties provided for delivery of 3,000 bushels of soft red winter wheat between June 15 and Aug. 30, 2008, at the cash price of

\$5.33 per bushel. Neither party disputed that Mr. Harral delivered only 277.38 bushels under the contract, leaving an open balance of 2,722.62 bushels.

The parties disputed the applicable cancellation costs. Keynes Bros. sought judgment against Mr. Harral in the amount of \$2,366.35. Mr. Harral calculated that he was still owed \$988.37.

The Decision

Keynes Bros., as the buyer, sent written confirmation for wheat contract number E-1906 to Mr. Harral, as the seller. Mr. Harral then signed and returned the contract. Therefore, the arbitrators confirmed that the contract terms for this transaction were those found in Keynes Bros.' contract.

On Aug. 21, 2008, Keynes Bros. sent a letter to Mr. Harral stating that the balance of the wheat contract must be completed by either delivering the wheat or cancelling the open balance on or before market close on Aug. 30, 2008.

During August 2008, according to Mr. Harral's argument submitted to NGFA in this case, he attempted to originate wheat from other local farmers to fulfill the remainder of his contract to Keynes Bros., but he said he was unable to buy any wheat for delivery. On Sept. 12, 2008, Mr. Harral responded to the Aug. 21 letter from Keynes Bros., stating that he did not dispute that he still had a balance of 2,722.62 bushels of wheat to deliver to Keynes Bros. to fulfill the contract terms. However, Mr. Harral did dispute Keynes Bros. claimed cancellation cost of \$2,366.36.

Mr. Harral claimed that he was due \$988.37. On Dec. 9, 2008, Mr. Harral submitted information to the NGFA showing the cash price for wheat delivered to Valley Grain, a local elevator in Elmwood, Ohio, two miles from Keynes Bros. facility.

Keynes Bros. sought to cancel the defaulted portion of the contract "*at fair market value based on the close of the market the next business day,*" pursuant to NGFA Grain Trade Rule 28(A). However, the arbitrators determined that Keynes Bros. incorrectly calculated the cancellation charges for the contract in question. The cancellation price was to have been established based upon the market value at the close of the market on "*the next business day,*" which in this case would have been Sept. 2, 2008. The arbitrators concluded that the market value on Sept. 2, 2008, was \$5.17 per bushel. The difference in the applicable cancellation price and the original contract price consequently was 16 cents per bushel in favor of Mr. Harral. The arbitrators calculated that 16 cents per bushel (less the 10 cents per bushel contract cancellation fee) indicated a net difference of 6 cents per bushel due to Mr. Harral.

The Award

Therefore, Mr. Harral was awarded \$163.34 for the difference in the cancellation price and original contract price. Further, in the event that Keynes Bros. Inc. had not yet paid for the 277.38 bushels of wheat delivered, Mr. Harral also was awarded \$1,411.28 for the wheat he delivered in partial satisfaction of the contract.

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

Brian Mehrmann, Chair

Regional Manager/Vice President
DeBruce Grain Inc.
Kansas City, Mo.

Lori J. Goetzinger

Grain Merchandiser
West Central Cooperative
Ralston, Iowa

Jeff Spence

Grain Division Manager
Crystal Valley Co-op
Lake Crystal, Minn.