



National Grain and Feed Association

# Arbitration Decision

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April 4, 2013

## Arbitration Case Number 2539

**Plaintiff: Johnson Grain LLC, Waverly, Ill.**

**Defendant: Archer Daniels Midland Co. d/b/a ADM Grain Co., Decatur, Ill.**

### Statement of the Case

This arbitration case involved a claim by Johnson Grain LLC (Johnson) against Archer Daniels Midland Co. d/b/a ADM Grain Co. (ADM) for damages of \$303,405.30, plus interest, involving two contracts entered into by the parties on Nov. 10, 2009 for the sale of U.S. No. 2 yellow corn.

The first contract (number P740530) provided for Dec. 1-15, 2009 delivery. The second contract (number P740532) provided for Dec. 1-20, 2009 delivery. Each contract was for one BNSF shuttle train (440,000 bushels) delivered to Hereford, Texas, both on buyer's equipment. Both trains ultimately were spotted on Dec. 26, 2009, one to Johnson and the other to Ruff Brothers.

Johnson had purchased a shuttle train on Dec. 8 from another seller, Ruff Brothers, to satisfy its first contract with ADM (number P740530). The shuttle was placed by ADM at Ruff

Brothers on Dec. 26, which was outside of the agreed-upon delivery dates in the contracts between ADM and Johnson, and between Johnson and Ruff Brothers. Ruff Brothers notified Johnson that it had incurred additional costs because the train was placed late. Beginning by e-mail on Dec. 22, Johnson advised ADM that it would be claiming 17 cents per bushel from ADM as a result of the late delivery based upon NGFA Grain Trade Rule 28.

A shuttle for the second contract (P740532) was spotted for loading on Dec. 26, 2009, at Johnson's facility. Through a series of emails starting on Dec. 22, Johnson Grain requested that ADM pay 12 cents per bushel based upon the difference in values. Johnson Grain further stated that if ADM did not pay the 12-cents-per-bushel differential, it also would request \$176,000 in lost revenue on bushels missed.

### The Decision

ADM's contract confirmations were submitted by both parties in their claims. The arbitrators concluded that ADM's contracts were the binding contracts based upon NGFA Grain Trade Rule 3(B), which states:

*(B) 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.*

For the first contract, Ruff Brothers requested an additional cost of 17 cents per bushel due to the train being placed late, and Johnson agreed. The arbitrators consequently determined that Johnson thereby agreed to extend its contract with ADM since it had not notified ADM that it was in default under NGFA Grain Trade Rule 28(B) [Buyer's Non-Performance]. In their deliberations, the arbitrators relied upon NGFA Grain Trade Rule 4 [Alteration of Contract], which states in relevant part that "any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing." The arbitrators did not find any evidence that ADM agreed to

the additional charges through e-mails between the parties or otherwise. Therefore, the arbitrators concluded that no damages were to be due to Johnson from ADM for the first contract, since Johnson Grain agreed to load the train. The arbitrators also concluded that Johnson's agreement to Ruff Brothers' request to pay the additional cost had no relevance to Johnson's agreement with ADM.

Concerning the second contract, the arbitrators again referred to NGFA Grain Trade Rule 4 [Alteration of Contract], and did not find any evidence that ADM agreed to the additional charges through emails. Johnson Grain failed to properly invoke Grain Trade Rule 28(B).

On Dec 22, 2009, ADM officially put Johnson on notice of failure to perform on the contract under Grain Trade Rule 28(A). Johnson stated that it then loaded the train on Dec. 26, 2009 to prevent paying cancellation fees to ADM. Therefore, it appeared to the arbitrators that both parties were acting as though the contract still was open for execution. Johnson's letter stated that the correspondence served as notice to ADM that it was in default on the contract. But Johnson did not provide any rule or other grounds upon which it would determine that ADM was in default, since Johnson had agreed to load the train and, by doing so, signaled that the contract had been extended.

## The Award

The arbitrators concluded that no damages should be paid to Johnson by ADM, because Johnson Grain agreed to load the trains outside of the original contract terms.

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

**Jim Lee, Chair**  
Merchandiser  
Beachner Grain Inc.  
Parsons, Kan.

**Ladd Lafferty**  
Vice President  
Wheeler Brothers Grain Co.  
Watonga, Okla.

**David Pope**  
Senior Merchandiser  
CHS Inc.  
Inver Grove Heights, Minn.