



National Grain and Feed Association Arbitration Decision

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January 9, 2014

CASE NUMBER 2636

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

Defendant: Roger Selle, Coulterville, Ill.

STATEMENT OF THE CASE

This dispute involved six contracts entered into between the buyer, Bunge North America Inc. (Bunge), and the seller, Roger Selle (Selle), for delivery of 500 bushels of U.S. No. 1 yellow soybeans and 5,000 bushels of U.S. No. 2 yellow corn to Bunge's facility in Grand Tower, Ill.

The "Confirmation of Purchase Contract" for each of the six contracts was signed by both Bunge and Selle. Delivery on the contracts was to occur on different dates between November 2010 and February 2011.

On Jan. 7, 2011, Selle delivered 170.29 bushels of soybeans to Bunge. On Jan. 10, Bunge paid Selle for these delivered bushels. Selle did not deliver any additional grain to Bunge in fulfillment of the contracts.

Bunge argued that between Nov. 1, 2010 and Jan. 31, 2011, a Bunge representative contacted Selle concerning Selle's open contracts and the need for Selle to start delivering grain under those contracts. Bunge claimed that Selle at that time assured the Bunge representative that he would deliver on the contracts.

Selle claimed he attempted to make a delivery of soybeans to Bunge on Jan. 2, 2011. Selle stated he was unable to complete the delivery after waiting in the delivery line for over four hours, which Selle argued was "not commercially reasonable." Selle also argued that between April 2011 and May 2011, a Bunge representative informed Selle on several occasions that the Grand Fork facility would only accept grain on specific days because the river levels were too high. Bunge argued that had Selle delivered the grain during the original contract delivery period, the river levels would not have been too high. Bunge also argued that, in order to accommodate Selle, Bunge offered to both allocate its own trucks for Selle's use and extend the elevator hours to allow additional time for delivery. Bunge claimed that Selle never accepted these accommodations.

On May 10, 2011, a Bunge representative spoke with Selle by telephone. Bunge claimed that Selle stated at that time he had grain to deliver, that he simply did not have time to haul it, and that he would deliver the grain in the next two to three weeks.

Bunge claimed that between May 10 and June 10, 2011, Bunge representatives made several attempts to contact Selle by phone. Bunge stated that Selle did not answer or return any of these calls. Bunge also stated that during this time Bunge representatives went to Selle's home but no one answered the door.

On June 10, Selle telephoned Bunge to discuss the six open contracts. During that conversation, Selle insisted he still had grain to deliver. The Bunge representative stated that if Selle did not deliver the grain by June 17, that Bunge would cancel the six contracts.

Selle argued that during the June 10 telephone conversation, an oral agreement was made between the Bunge representative and Selle to extend the contracts until late July.

On June 17, a Bunge representative telephoned Selle. Bunge claimed that Selle advised at this time that he would not be delivering any additional grain to Bunge. On June 17, Bunge cancelled the six contracts and issued six "Confirmations of Change in Contract" (cancellations) to Selle, showing the market difference and cancellation fees allegedly owed. That same day, a Bunge representative hand-delivered the six cancellations to Selle with an invoice for the amount allegedly owed of \$15,768.31. During this meeting, Selle signed all six of the cancellations. Bunge claimed that at this meeting Selle also requested additional time to make the payment.

Selle disputed the validity of the cancellations, arguing that he was told by a Bunge representative that he "must" sign the cancellations. Selle argued that he believed that by signing the cancellations, Bunge would not pursue the matter further.

On July 22, 2011, Bunge representatives again met with Selle in person. Bunge claimed that at this time, Selle provided a check, post-dated to July 29, 2011, in the amount of \$15,768.31. However, Selle's check was subsequently returned by the bank for insufficient funds.

Selle acknowledged that the July 22 meeting occurred. Selle claimed, however, that during this meeting he was "attacked and intimidated" by Bunge's representatives. Selle argued that he only wrote the check to "diffuse the situation." Bunge denied these allegations. According to Bunge, it was Selle's conduct that was threatening.

On Feb. 21, 2012, Selle submitted payment to Bunge in the amount of \$7,884.18. On May 29, 2012, Selle submitted a second payment to Bunge in the amount of \$2,000. Bunge claimed that Selle made no further payments related to this dispute.

Bunge claimed total remaining damages in the amount of \$5,884.13.

THE DECISION

The arbitrators carefully reviewed the facts specific to this case. After thorough review and deliberation, the arbitrators ruled unanimously in favor for Bunge.

The arbitrators noted that each of the six contracts and the six cancellations were signed by Selle. The arbitrators also agreed that the partial payment by Selle reflected additional assurances that the contracts and the cancellations were valid and enforceable.

The arbitrators determined that regarding the July 22, 2011 meeting between the parties, the evidence was contradictory and insufficient to refute the signed contracts between Bunge and Selle. The vast weight of the evidence provided in this case demonstrated that the contracts, cancellations and Bunge's claims for damages were valid.

THE AWARD

The arbitrators ruled in favor of Bunge for the amount of \$5,884.13. Interest shall accrue on the award at the rate of 3.25 percent pursuant to NGFA Arbitration Rule 8(m) from June 17, 2011 until the award is paid in full.

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

Sean Broderick, *Chair*
Senior Merchandising Manager
CHS
Inver Grove Heights, Minn.

Keith Hunt
Feed Grains Trade Manager
Attebury Grain LLC
Amarillo, Tex.

Duane Madoerin
Merchandising Manager
Gold-Eagle Cooperative
Goldfield, Iowa