



# Arbitration Decision

National Grain and Feed Association

October 25, 1996

## Arbitration Case Number 1767

**Plaintiff:** The Andersons Inc., d/b/a Metamora Elevator, Metamora, Ohio

**Defendant:** Leon Beaubien, Hudson, Mich.

### Statement of the Case

The Andersons Inc., d/b/a Metamora Elevator (Andersons), brought this arbitration complaint alleging that Leon Beaubien (Beaubien) breached a contract that required Beaubien to make January 1996 delivery of 20,000 bushels of corn to The Andersons at a price of \$2.50 per bushel. The Andersons sought an award of damages against Beaubien in the amount of \$21,800, plus its attorney fees, costs of collection and interest charges.

The Andersons contended that Beaubien made an oral in-person offer to sell 20,000 bushels of corn for delivery in January 1996 to The Andersons' Metamora location. The Andersons also contended that an ensuing telephone confirmation of the offer was made. Subsequently, Andersons accepted Beaubien's offer and a standard Andersons' contract confirmation<sup>1</sup>, signed by an Andersons' employee, was mailed to Beaubien. While Beaubien failed to sign and return the contract confirmation, neither did Beaubien immediately notify The Andersons of any disagreement with the terms of the contract confirmation.

The evidence submitted also indicated that The Andersons had subsequent contacts with Beaubien after mailing the contract confirmation. Nevertheless, on Jan.

22, 1996, Beaubien asserted that he wasn't going to perform because he hadn't signed the contract confirmation. On Jan. 31, 1996, after discussions between the parties failed to resolve the issue, The Andersons mailed a letter to Beaubien reiterating the company's position about the binding nature of Beaubien's contractual obligations and offering to extend the delivery period until Feb. 8, 1996. The Andersons also advised Beaubien that damages would be sought should Beaubien fail to deliver by Feb. 8.

Beaubien acknowledged some of the contacts with Andersons' employees and acknowledged receiving the contract confirmation. However, Beaubien's argument was that "the original [of the contract] was disposed of...as he did not wish to contract with Andersons for the sale of corn." Beaubien contended that in other cases he had signed contracts. Therefore, Beaubien stated that "[h]is position then as now is that he did not return a signed contract to them [Andersons] as was his course of dealing in the past and therefore he had no intent to be bound by the contract."

### The Decision

The arbitration committee reviewed all of the arguments made by both parties. The committee found in favor of The Andersons, concluding that a valid contract

<sup>1</sup> Among the terms set forth in The Andersons' contract confirmation was a provision providing that "any disputes or controversies arising out of this contract shall be arbitrated by the National Grain and Feed Association, pursuant to its arbitration rules." The contract confirmation also contained a clause referencing the "Grain Trade Rules of the National Grain and Feed Association."

existed between the parties and that The Andersons had mailed a contract confirmation to Beaubien that complied with the provisions of NGFA Grain Trade Rule 6 and generally recognized commercial law.

Nevertheless, the arbitrators strongly recommend -- even if not required by law or trade rule -- that all grain buyers conduct a thorough follow-up when relying on contract confirmations. Thorough follow-up will reduce the potential for subsequent disputes about contract formation.

### **The Award**

The arbitration committee awarded the sum of \$21,800 in damages to The Andersons Inc. against Leon Beaubien. The contract cancellation charges were calculated using The Andersons' cash truck bid on Feb. 5, 1996 (\$3.49 per bushel) and the contract price of \$2.50 per bushel (99-cents, plus a 10-cent-per-bushel contract cancellation charge)<sup>2</sup>.

The arbitrators concluded no interest should be awarded in this case, provided the defendant pays the award within 15 days of being notified of this award. Should the defendant fail to pay the award within 15 days, interest will accrue at the rate of 12 percent per annum from Feb. 8, 1996 until the date paid. Each party is directed to pay its own attorney fees and costs incurred in this arbitration.

Submitted with the unanimous consent of the NGFA arbitration committee, whose names appear below:

**David S. Reiff**, *Chairman*  
Reiff Grain and Feed Inc.  
Fairfield, Iowa

**Herman Geers**  
Michigan Agricultural Commodities  
Lansing, Mich.

**Mark Schweitzer**  
Countrymark Cooperative Inc.  
Indianapolis, Ind.

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<sup>2</sup> The contract between the parties expressly provided that, in addition to other damages, a contract cancellation charge would be assessed against the seller in the event of failure to fulfill the contract.