



Arbitration Decision

National Grain and Feed Association

August 28, 1997

Arbitration Case Number 1825[©]

Plaintiff: Frick Services Inc., Wawaka, Ind.

Defendant: Michael Lee Miller, Bourbon, Ind.

Findings and Default Judgment

The plaintiff, Frick Services Inc., filed a request for arbitration with the National Grain and Feed Association (NGFA[®]) by letter dated April 14, 1997 and received by the NGFA on April 17, 1997.

The plaintiff alleged that Michael Lee Miller, the defendant, failed to deliver 5,000 bushels of U.S. No. 2 yellow corn on a grain purchase contract originally entered into on Feb. 14, 1995. The plaintiff alleged that a "call" on the contract was exercised in October 1995 and that the plaintiff "covered" in the market on Feb. 18, 1997. The plaintiff sought damages of \$1.64 per bushel.

The plaintiff included a copy of the grain purchase contract with its complaint. The contract bore what appeared to be the signatures of both the defendant and a representative of Frick Services Inc. Among other things, the contract's express terms provided that it was "subject to NAT'L GRAIN & FEED ASSOCIATION Trade Rules."

Acting upon the plaintiff's request for arbitration, the NGFA prepared a "National Grain and Feed Association Contract for Arbitration" and mailed it to the plaintiff for execution on April 22, 1997. At the same time, the defendant, Michael Lee Miller¹, was notified of the plaintiff's request and sent copies of the plaintiff's

complaint requesting arbitration. The U.S. Postal Service Certified Mail Domestic Return Receipt (# Z 370 603 240) showed that the letter was received at the defendant's address on April 30, 1997 and was signed for by a "Barb Miller." The contract for arbitration was executed by an officer of Frick Services Inc. and returned to the NGFA with the arbitration service fee of \$400. The NGFA then sent the NGFA contract for arbitration to the defendant for execution by certified mail letter dated May 12, 1997, which the U.S. Postal Service Certified Mail Domestic Return Receipt (# Z 370 603 229) showed was delivered and signed for on May 15, 1997.

The defendant failed to return the NGFA contract for arbitration or pay the arbitration service fee. The plaintiff, by letter dated June 16, 1997, inquired as to whether any response had been received from the defendant and, if not, requested that the NGFA enter a default judgment against the defendant. The NGFA then sent a letter dated June 30, 1997, to the defendant via Federal Express (Airbill Tracking Package No. 4670686440). Federal Express indicated that the package was delivered on July 1, 1997 and was signed for by a "B. Miller." Federal Express is a "recognized overnight delivery service" within the meaning of Section 10 of the NGFA Arbitration Rules.

¹ All notices and correspondence were sent to defendant at the following address: 8171 Beach Road, Bourbon, IN 46504.

The NGFA's letter dated June 30, 1997 once again notified the defendant that an arbitration complaint had been filed against him. In addition, the NGFA's June 30th letter stated:

"You should also note that Frick Services, Inc. has requested that a default judgment be entered against you by the NGFA in the amount of \$8,200 (copy of June 16, 1997 letter enclosed)."

"Please sign the NGFA Contract for Arbitration and return it, along with the arbitration service fee of \$400 to this office by July 9, 1997. Otherwise, a judgment may be entered as requested."

The defendant did not respond to any of the NGFA's correspondence. The plaintiff, by letter dated Aug. 8, 1997, submitted another request for entry of a default judgment and included the "Affidavit of Daniel R. Frick" itemizing the plaintiff's damages. Mr. Frick is executive vice president of Frick Services Inc.

The contract between the parties clearly provided that the NGFA Trade Rules applied to the contract. In addition, the contract was signed by both parties². Both state and federal courts have found that incorporation of the NGFA Trade Rules into a contract includes an obligation to arbitrate disputes pursuant to the NGFA Arbitration Rules. [See e.g., Wilson Fertilizer & Grain v. ADM Milling, 654 N.E.2d 848 (Ind. App. 1995); and Hodge Bros., Inc. v. DeLong Co., Inc., 942 F.Supp. 412 (W.D. Wisc. 1996)]

There was no indication that the defendant intended to execute the NGFA contract for arbitration, pay the required arbitration service fee, or otherwise comply with the NGFA Arbitration Rules. Section 5(d) of the NGFA Arbitration Rules requires a party to "complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary." The defendant violated the time limits in the rules. Moreover, the defendant was notified that his failure to proceed could result in the entry of a default judgment.

The plaintiff submitted evidence supporting the damages requested in this case as follows:

\$8,200.00	Initial claim based on damages of \$1.64 per bushel multiplied by 5,000 bushels.
\$ 304.20	Interest from Feb. 18, 1997 to Aug. 6, 1997 at the rate of 8 percent per annum. This is the rate provided for by Ind. Code 24-4.6-1-103, as requested by the plaintiff.
\$8,504.20	Total damages claimed as of Aug. 6, 1997.

Section 1 of the NGFA Arbitration Rules vests in the National Secretary the responsibility and authority to administer the NGFA Arbitration System. As such, the National Secretary makes such procedural decisions as are necessary to implement the provisions of the NGFA Arbitration Rules. The defendant in this case failed to comply with the NGFA Arbitration Rules. Thus, it was appropriate to enter the requested award in favor of the plaintiff, Frick Services Inc., against the defendant, Michael Lee Miller.

The Decision

It is therefore ordered that:

Frick Services Inc. is awarded a judgment against Michael Lee Miller in the amount of \$8,504.20 as of Aug. 6, 1997. Compound interest at the rate of 8 percent on the judgment of \$8,504.20 shall accrue from Aug. 6, 1997 until paid.

Dated Aug. 20, 1997

By: David C. Barrett Jr.
National Secretary

² Thus, the grain purchase contract in this case was not merely a confirmation of an oral contract, but the actual signed agreement entered into by both parties. This avoids the necessity of applying the rules applicable to confirmations contained in NGFA Grain Trade Rule 6.