



National Grain and Feed Association Arbitration Decision

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Sept. 21, 2000

Arbitration Case Number 1833

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: William Anderson, Elgin, Neb.

Statement of the Case

This case involved a complaint¹ filed by Cargill Inc. (Cargill), the plaintiff, against William Anderson (Anderson), the defendant, over Anderson's alleged failure to pay amounts owed to Cargill for cancellation of the defendant/seller's "NO BASIS ESTABLISHED" cash contracts.

Cargill sought damages for market differences between the contract prices and replacement cost at cancellation, plus cancellation charges and interest. However, Anderson contended that Cargill had breached the contracts at issue by changing the contract prices unilaterally.

Anderson sold to Cargill 45,000 bushels of U.S. No. 2 yellow corn in May, June and August 1995 for January 1996 delivery (*involving nine separate contracts for 5,000 bushels each*). The nine contracts all called for delivery to Cargill's Albion, Neb., facility. Both parties signed all of the contracts and each contract included a provision² to arbitrate any disputes through the NGFA Arbitration System. All nine contracts were "NO BASIS ESTABLISHED" contracts (otherwise known as hedge-to-arrive contracts), with a provision that the basis would be established by January 1996. All nine contracts referenced the March 1996 futures.

On Jan. 19, 1996, at Anderson's request, the contracts were amended to roll the delivery period to May 1996 and the futures reference price from March 1996 to May 1996. Cargill sent confirmations of contract changes to Anderson for each of the nine contracts and each of these confirmations referenced an invoice that was used to offset the higher futures reference price.

Anderson on April 26, 1996, established a basis of -0.30 for five of the nine contracts in question. Anderson on April 30, 1996, established a basis of -0.22 for two of the remaining contracts. The final two contracts, at Anderson's request, were rolled to January 1997 delivery and a new futures reference price from May 1996 to March 1997. The amendments were all documented by a "Confirmation of Contract Change" sent by Cargill³ to Anderson.

Anderson on May 31, 1996 advised the elevator that back problems and related difficulties would prevent him from delivering in May 1996 as required by seven of the amended contracts. Cargill agreed to accept delivery in June 1996.

¹ While Cargill filed its initial complaint by letter dated May 28, 1997, the defendant failed to sign the NGFA Contract for Arbitration or pay the required arbitration service fee. Instead, Anderson filed a complaint against Cargill in a Minnesota state court. Cargill filed a motion with the court to compel arbitration based upon a NGFA arbitration clause contained in the contracts. The court granted Cargill's request and stayed the court case. See *William Anderson v. Cargill, Incorporated*, No. 97-22702 (Minn. Fourth Judicial Dist. Ct., Hennepin County, April 15, 1998) (order compelling NGFA arbitration). The defendant complied with the court's order and this arbitration case proceeded.

² The contracts provided: "The parties both agree that the sole remedy for resolution of any and all disagreements and disputes between the parties arising from this agreement shall be arbitration proceedings under the NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties."

³ These confirmations of contract change also contained the signature of a Cargill representative. The arbitrators noted that the original contract confirmations contained a term that provided as follows: "ALTERATION OF TERMS: None of the terms and conditions contained in this Contract may be added to, modified, superseded, or otherwise altered except with the written consent of an authorized representative of Buyer."

Cargill, by letter dated June 26, 1996, reminded Anderson of his June 1996 delivery obligation on the seven contracts. Cargill also said that on July 1, 1996, it attempted to reach Anderson by phone. Anderson failed to respond to either communication or to deliver. In response to Anderson's breach of his delivery obligations, Cargill established its per-bushel damages using the market close on July 1, 1996, and invoiced

Anderson for these amounts.

Likewise, Anderson failed to deliver on the other two contracts in January 1997 as specified in the contracts. Cargill on Feb. 3, 1997 established its damages on these two contracts and invoiced Anderson for these amounts. Anderson failed to pay the invoiced amounts.

The Decision

Anderson's argument seemed to center on whether the invoices that Cargill referenced on its "Confirmation of Contract Changes" were a valid part of the contract.

When Cargill consented to roll the contracts to a later delivery date (and consequently a later futures reference price that was higher or lower than the original), it simply attached an invoice as an offset. This had the effect of making the roll neutral in value (the roll did not cause a gain or loss for either party). Anderson argued that Cargill should have priced the contracts using higher futures reference prices without regard to the invoices. He also stated that he did not understand the pricing methodology, did not agree to the invoice, and therefore elected not to deliver on any of the contracts in dispute.

The manager at Cargill's Albion facility stated that before these "No Basis Established" contracts were used, that the company held classes for producers on how the contracts worked and how they would be handled. Cargill's manager also indicated that Anderson attended at least one of these classes. Cargill's manager testified that, in his opinion, Anderson was aware of what he was doing. Cargill submitted records that showed many phone calls between Anderson and the Albion facility throughout the time period of the contracts. The evidence showed that Anderson raised the issue of a dispute over pricing methodology for the first time in his arbitration arguments. He requested and received contract rolls, basis-pricing orders, extensions to delivery periods and never once voiced any objections. Nor did Anderson send any confirmations. Cargill confirmed every change to the contracts with a written confirmation sent to Anderson, none of which were ever disputed by Anderson. The issue of pricing methods arose only during arbitration arguments.

The arbitrators concluded that Cargill confirmed each contract and each mutually agreed contract change in writing to Anderson. The evidence showed that Anderson signed each of the purchase contract confirmations. The confirmations of contract change issued by Cargill received no response from Anderson.

Consequently, the arbitrators concluded that Anderson understood the workings of the contracts at issue, and that the

invoices referenced in each "Confirmation of Contract Change" were a valid part of the contracts. Anderson, per the original contract confirmations, agreed that he was a "merchant." Anderson, per the original contract confirmations, also agreed on the procedure for altering or amending the contracts. [See footnote 3.] Each "Confirmation of Contract Change" also provided (immediately above a Cargill representative's signature) that: "The above covers our understanding of change(s) in terms and conditions of the contract designated. The new terms are to be considered as part of the original contract. Failure to advise us immediately upon receipt of this confirmation will be understood by us as your acceptance of these new terms." These express contract terms bound both parties⁴.

Therefore, the arbitrators concluded that it was Anderson who breached the contracts, and that Cargill correctly bought-in for his account. The arbitrators also concluded that the damages sought by Cargill (shown in the table below) were consistent with the terms of the contract and the custom of the grain trade.

Contract Number	Bushels	Cash Price on 7/1/96	Amended Contract	Service Fees ²	Damages
23489	5,000	\$5.15	\$2.465	\$.04	\$13,625.00
23490	5,000	\$5.15	\$2.465	\$.04	\$13,625.00
23900	5,000	\$5.15	\$2.6325	\$.04	\$12,787.50
23490	5,000	\$5.15	\$2.6325	\$.04	\$12,787.50
24140	5,000	\$5.15	\$2.6675	\$.04	\$12,612.50
24877	5,000	\$5.15	\$2.6775	\$.04	\$12,562.50
24878	5,000	\$5.15	\$2.6775	\$.04	\$12,562.50
Total Damages					\$90,562.50

Contract Number	Bushels	Cash Price on 2/3/97	Amended Contract	Service Fees ²	Damages
24080	5,000	\$2.695	\$1.5725	\$.06	\$5,912.50
24876	5,000	\$2.695	\$1.5675	\$.06	\$5,937.50
Total Damages					\$11,850.00

⁴ The arbitrators noted that the NGFA Grain Trade Rules, which reflect trade custom, also provide that a confirmation of a trade sent out by one party governs when the other party to the contract fails to object to the confirmation and also fails to send out its own confirmation. See NGFA Grain Trade Rule 3(C), which at the time was NGFA Grain Trade Rule 6(c).

[Footnotes 5 and 6 on page 3]

The Award

Therefore, it was ordered that:

- ◆ Cargill Inc. is awarded a judgment in the amount of \$90,562.50 against William Anderson, with compound interest at the rate of 8 percent per annum from July 1, 1996;
- ◆ Cargill Inc. is awarded a judgment in the amount of \$11,850 against William Anderson, with compound interest at the rate of 8 percent per annum from Feb. 3, 1997; and
- ◆ The parties are to pay their respective attorney fees and costs.
- ◆ All other claims regarding these contracts are denied.

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

Gene McEntee, *Chairman*
Office Manager
Colusa Elevator Co.
Nauvoo, Ill.

Von Johnson
Purchasing Manager
Prestage Farms
Clinton, N.C.

Bill Krueger
Manager
Lansing Grain Co.
Overland Park, Kan.

⁵ Each of the contracts on its front provided that: "NBE SERVICE CHARGE IN EFFECT TO BE ASSESSED FROM TIME OF DELIVERY UNTIL BASIS IS FIXED. NBE SERVICE FEE SHALL BE PAID BY SELLER TO BUYER AS FOLLOWS: \$0.02000 PER BUSHEL." The \$0.02-per-bushel fee was assessed twice, once at the time the contract was amended and again upon default.

⁶ These contracts were amended twice and the \$0.02-per-bushel service fee was assessed each time. The \$0.02-per-bushel service fee was assessed again at the time of default.