



Arbitration Decision

National Grain and Feed Association

January 28, 1999

Arbitration Case Number 1844

Plaintiff: Champaign Landmark Inc., Urbana, Ohio

Defendant: James Gray, Richwood, Ohio

Statement of the Case

This dispute involved a claim by Champaign Landmark Inc. (plaintiff-buyer) against James Gray (defendant-seller) over the defendant's alleged breach of three contracts for failure to deliver on his grain obligations.

As a result of this non-delivery, Champaign Landmark Inc. (Champaign) canceled its open contracts with James Gray (Gray) and sought to collect the market differences, totaling \$297,737.15, plus finance charges of 2 percent per month commencing 30 days from the date of invoice until paid. Champaign also sought reimbursement of attorney fees and other costs as a result of this alleged breach of contract.

The contract numbers in dispute were: No. 2063 for 23,849.61 bushels of wheat; No. 2681 for 62,145.36 bushels of corn; and No. 5436 for 70,000 bushels of corn. Each was a hedge-to-arrive contract that was flexible in delivery terms for the producer, but required that delivery occur within two years. At the root of Champaign's complaint was the alleged failure of Gray to price, roll or deliver on the aforementioned contracts.

The defendant maintained that the aforementioned contracts were changed without his agreement and that he refused to sign the modifications. The defendant, Gray, agreed that he signed and accepted the contracts. But he maintained that "dozens" of modifications were made by Champaign and forwarded to him for review and signature. However, the defendant said he refused to sign the contract modifications because he thought they operated to the benefit of Champaign and to his detriment.

The defendant asserted that NGFA Trade Rule 41 was violated by Champaign when it allegedly changed the contracts without his express or implied permission. Champaign countered that the contracts remained the same contracts, the original of which was signed by Gray. After it became apparent Gray was not going to deliver, Champaign said, it canceled all contracts on June 27, 1997 and billed Gray for the charges it maintained were due.

The Decision

The arbitration committee found unanimously in favor of the plaintiff, Champaign Landmark Inc. The arbitrators concluded that the three contracts in question were valid contracts, and that the modification of the contracts alleged in this case were governed by NGFA Grain Trade Rule 6 (a) and (c).

Specifically Trade Rule 6(a) states as follows:

"Confirmation: It shall be the duty of both the Buyer and Seller, not later than the close of business day following the

date of trade, to send a written confirmation, each to the other (the buyer a confirmation of purchase, the Seller a confirmation of sale), setting forth the specifications as agreed upon in the original articles of trade. Upon receipt of said confirmation, the parties hereto shall carefully check all specifications named therein and upon finding any differences, shall immediately notify the other party to the contract, by telephone and confirm by written communication, except in the case of differences of minor character, in which event, notice by written communication will suffice."

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Specifically, Trade Rule 6 (c) states as follows:

"If either buyer or seller fails to send out confirmation, the confirmation sent out by the other party will be binding upon

both in the case of any dispute, unless confirming party has been immediately notified by non-confirming party, as described in 6(a), of any disagreement with the confirmation received."*

The Award

Therefore, the arbitrators awarded to the plaintiff, Champaign Landmark Inc., the full market difference and cancellation charges amounting to \$297,737.15.

The contracts and awards are detailed as follows:

▶ Contract No. 2063 (23,849.41 bushels wheat):	\$ 35,585.70
▶ Contract No. 2681 (62,145.36 bushels of corn):	124,601.45
▶ Contract No. 5436 (70,000.00 bushels of corn):	<u>137,550.00</u>
Total Award:	\$297,737.15

The arbitrators did not award legal fees to either party.

Therefore, it is ordered that:

Champaign Landmark Inc. is awarded a judgment against James Gray in the amount of \$297,737.15, plus compound interest at the rate of 9.50 percent per annum from 30 days after contract cancellation, June 27, 1997, until paid.

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

John Tuggle, *Chairman*
Manager
Robertson Grain Co. Inc.
Hillsboro, Texas

W. Michael Fisher
Plant Manager/Grain Marketing Manager
Producers Rice Mill
Wynne, Ark.

Lester Shipley
Vice President/General Manager
Cooperative Elevator
Greenwood, Miss.

**Editor's Footnote: The arbitrators' conclusions in this case are based on their determination that the parties actually reached initial oral agreements on the modifications to each of the contracts at issue. The arbitrators concluded that the facts of this case were different from the situation where a party sends out a unilateral amendment to an existing contract.*