



# National Grain and Feed Association Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3917

Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: [ngfa@ngfa.org](mailto:ngfa@ngfa.org), Web Site: <http://www.ngfa.org>

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## Arbitration Case Number 1978

**Plaintiff:** Richard Gohlke, Appleton, Wis.

**Defendant:** Didion Milling Inc., Johnson Creek, Wis.

### Statement of the Case

This case involved a dispute concerning an agreement ("Management Agreement") between Richard Gohlke ("Gohlke") and Didion Milling Inc. ("Didion"), which governed the management and operation of a grain storage and distribution facility in Ripon, Wis. ("facility").

The Management Agreement entitled Didion to manage and operate the facility in exchange for paying rent to Gohlke in an amount based on the profitability of the facility. The contract was entered into on April 1, 1996 and was terminated

on March 31, 1997.

At the end of the term of the agreement, Didion presented a final profit/loss ("P/L") statement to Gohlke that showed him owing Didion \$19,030.20. Gohlke contested this statement on the grounds that Didion withheld information required by the Management Agreement and provided inaccurate measurements of inventory in order to underestimate the profitability of the facility. Gohlke claimed damages in the amount of \$299,197.94.

### The Decision

As an initial matter, Didion claimed that this case was not timely filed with the NGFA National Secretary. This case was initially filed with the Fond Du Lac County Court of the State of Wisconsin, which issued an order to stay proceedings pending arbitration on Aug. 20, 1999. Gohlke's complaint was filed with the NGFA on Aug. 23, 1999, well within the 30-day time limit set by NGFA Arbitration Rule 3(d) for cases between a member (Didion) and a non-member (Gohlke) that are arbitrated pursuant to a court order. Thus, NGFA jurisdiction over this matter was well substantiated under its rules.

As for the substantive issues of the case, upon review of the facts, the arbitrators constructed the following P/L statement:

P/L Statement	
Facility Profit	\$ 109,924.88
Manager's Fee	58,900.00
Capital Project	(80,335.68)
Corn Inventory	199,088.00
Soybean Inventory	(51,125.25)
Workman's Compensation	(21,153.85)
Depreciation	(5,117.06)
Bankruptcy Charge	(10,976.52)
<b>Profit</b>	<b>\$ 199,204.52</b>

Items on the P/L statement are explained as follows:

- ▶ **Profit:** The facility's profit for the year was listed as **\$109,924.88**. This matched the figure on the P/L statement Didion provided to Gohlke.
- ▶ **Manager's Fee:** The manager's fee of **\$58,900** was also an expense to be paid by Didion, per the Management Agreement.
- ▶ **Capital Project:** Upgrading the facility's leg and conveyor system cost \$87,855.68, an expense that Gohlke disputed on the grounds that it was not permitted by the Management Agreement. However, Section 10 of the Management Agreement read: "Provided the Manager (Didion) first obtains the owner's (Gohlke) written consent, the manager may make alterations, improvements or additions to said facility and upon obtaining the Owner's consent shall constitute a Permitted Expense." Gohlke provided written consent when he signed and returned a letter from Didion, which described the repairs and included a price quote, with a note reading, "John, whatever you guys decide is all right with me."

When Gohlke disputed the original bill for \$87,855.68, Didion agreed to reduce the amount owed by \$7,520 – the amount attributable to the labor that was already on-site –

which brought the original bill to **\$80,335.68**. The arbitrators adopted this amount as a capital project charge permissible under the Management Agreement.

▶ **Corn Inventory:** The arbitrators determined that inventories must be calculated using the actual physical inventory at the facility and not the book inventory as claimed by Didion. The arbitrators also found that the fact that Didion had a license allowing it to commingle its inventories had no bearing on this case.

Thus, the arbitrators found that the facility's corn inventory exceeded the facility's obligations by 67,033 bushels at a value of \$2.97 per bushel, resulting in a credit in the amount of **\$199,088**.

▶ **Soybean Inventory:** Again, using figures from the actual physical inventory at the facility, the arbitrators found that soybean inventory fell short of the facility's obligations by 6,197 bushels, at a value of \$8.25 per bushel, resulting in an expense of **\$51,125.25**.

▶ **Workman's Compensation Charge:** The arbitrators agreed that the charge of \$21,153 as presented by Didion was proper, resulting in a **\$21,153.85** debit.

▶ **Depreciation:** The arbitrators agreed that the charge of \$5,117.06 as presented by Didion was proper, resulting in a **\$5,117.06** debit.

▶ **Bankruptcy Debt:** Mr. Kutz, a producer-customer of the facility, had defaulted on a contract for delivery to the facility and had discharged the ensuing debt to the facility through bankruptcy proceedings. The arbitrators agreed that the amount of the debt discharged, **\$10,976.52**, should be debited from the P/L statement.

▶ **Credits for Inventory Measurement Cost:** Didion presented a claim in the amount of \$36,000 for the cost of the physical size-up, a payment made to Terra International. This claim was denied because the arbitrators concluded that Didion's transaction with Terra International<sup>1</sup> had no bearing on this case.

All of the following expenses claimed by Didion were disallowed: General administrative expenses; record keeping expense; accounts receivable and accounts payable expense; merchandising expense; general office and overhead, bank and credit expense; grain dealer's license expense; rail car expense; pension plan expense; wheat inventory adjustment and storage charge; and attorney's fees.

The P/L statement, adjusted to conform to the arbitrator's interpretation of the Management Agreement, reflected a profit in the amount of \$199,204.52. The terms for payment of rent were defined in the Management Agreement as follows: "In the event there is a net profit in excess of \$100,000.00 for the preceding fiscal year (April 1, 1996 to March 31, 1997), Manager shall pay to owner as rent the following portion of the Net Profit. Manager shall pay the first \$200,000.00 of net profit in excess of \$100,000.00 to the Owner (Gohlke) as rent." Thus, under the Management Agreement, Didion was required to pay to Gohlke any part of the profits, up to/including \$200,000, that exceeded the first \$100,000, which in this case amounted to \$99,204.52.

## The Award

Therefore, it is ordered that Didion pay Gohlke the amount of \$99,204.52, plus interest from June 20, 1997 accrued at the rate of 10 percent per annum.

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

**Donald Wenneker, Chair**  
Cash Grain Manager  
A.E. Staley Manufacturing Co.  
Decatur, Illinois

**George Secor**  
President and Chief Executive Officer  
Country Spring Farmers Co-op  
Fremont, Ohio

**Robert Obrock**  
Vice President  
Farmers Grain Dealers  
Bowling Green, Ohio

<sup>1</sup> Didion sold its business operations, including its interest in the Management Agreement, to Terra International during the term of the Management Agreement. In so doing, Didion incurred costs for the physical size-up and claimed them as a refundable expense.

# NGFA Arbitration Appeals Case No. 1978

**Appellant: Didion Milling Inc., Johnson Creek, Wis.**

**Appellee: Richard Gohlke, Neshkoro, Wis.**

## Statement of the Case

The Arbitration Appeals Committee, individually and collectively, reviewed all the evidence submitted in this case. It also reviewed the findings of the original arbitration committee.

As was the situation in the original arbitration case, there

were two major questions to be decided in the appeal of this case: 1) Was this matter timely filed under the NGFA Arbitration Rules?; and 2) What amounts, if any, were the parties entitled to under the Management Agreement?

## The Decision

The NGFA's National Secretary and the National Arbitration Committee correctly decided that the National Grain and Feed Association had jurisdiction to arbitrate this case. The National Secretary did so in an *Initial Decision on Jurisdiction* dated Nov. 15, 1999, and the National Arbitration Committee did so in its decision in this case.

At the time this arbitration was filed, Section 3(d) of the NGFA Arbitration Rules provided as follows:

*"The original complaint in connection with any disputed matter proposed for arbitration must be filed with the National Secretary within twelve (12) months after a claim arises, or within twelve (12) months after expiration date for performance of the contract or contracts involved. For cases, between a member and nonmember arbitrated pursuant to court order, the complaint must be filed with the National Secretary by either or both parties within 30 days of issuance of court order."*

The Arbitration Appeals Committee found that this case was initially filed with the Fond Du Lac County Court of the state of Wisconsin, which issued an order to stay proceedings pending arbitration on Aug. 20, 1999 and that the appellee, a nonmember, filed his arbitration complaint against the appellant, a member of NGFA, on Aug. 23, 1999. Since the filing of the arbitration case was well within the 30-day limitation period set forth by Section 3(d) of the Arbitration Rules, the Arbitration Appeals Committee found that the complaint was timely filed.

In connection with the division of profits under the Management Agreement, the Arbitration Appeals Committee made the following conclusions in constructing a profit/loss statement ("P/L statement"):

- ◆ The profit from the Ripon facility of \$109,924.88 was the correct base from which to construct the P/L statement.
- ◆ The Manager's Fee of \$58,900 was correctly added to the base profit.
- ◆ The Capital Project of \$80,335.68 was correctly deducted from the base profit.
- ◆ As was found in the original arbitration decision, the actual physical inventory should be used as opposed to book inventory. Therefore, for corn inventory adjustment purposes, \$199,088 was correctly added, and for soybean inventory adjustment purposes, \$51,125.25 was correctly deducted.
- ◆ Workman's compensation in the amount of \$21,153.85 had been previously taken into account in arriving at the original facility profit of \$109,924.88, and therefore, should not have been deducted.
- ◆ Depreciation in the partial amount of \$5,117.06 had been previously taken into account in arriving at the original facility profit of \$109,924.88, and therefore, should not have been deducted.

In addition, the Management Agreement defined a large number of items that were allowed to be included in constructing the P/L statement. Depreciation incurred by the appellant was not allowed per the Management Agreement. In arriving at the original facility profit of \$109,924.88, depreciation in the amount of \$10,234.13 had previously been deducted, and therefore, this amount should have been added.

▶ The bankruptcy charge in the amount of \$10,976.52 had been previously taken into account in arriving at the original facility profit of \$109,924.88, and therefore, should not have been deducted.

Accordingly, the P/L Statement should read as follows:

Items	Amount
Facility Profit	\$109,924.88
Manager's Fee	58,900.00
Capital Project	(80,335.68)
Corn Inventory	199,088.00
Soybean Inventory	(51,125.25)
Workman's Compensation	—
Depreciation	10,234.13
Bankruptcy Charge	—
<b>Total Profit</b>	<b>\$246,686.08</b>

Pursuant to the Management Agreement, the first \$100,000 of profit accrues to the Appellant, as manager of the Ripon facility, with the next \$200,000, or portion thereof, accruing to the Appellee, as the owner.

## The Award

Thus, the Arbitration Appeals Committee denied all claims of the appellant, Didion Milling Inc., and awarded the appellee, Richard Gohlke, \$146,686.08, plus interest from June 20, 1997 at the rate of 10 percent until paid in full.

Submitted with the unanimous consent and approval of the Arbitration Appeals Committee, whose names are listed below:

**John McClenathan, Chair**  
Vice President  
Archer Daniels Midland Co.  
Decatur, Ill.

**Philip Hageman**  
President  
Philip Hageman and Associates  
Lapeer, Mich.

**Richard A. McWard**  
Vice President, Corporate and Industry Affairs  
Bunge North America Inc.  
St. Louis, Mo.

**Steven F. Nail**  
President and Chief Executive Officer  
Farmers Grain Terminal Inc.  
Greenville, Miss.

**Daniel W. Walski**  
General Manager and Chief Executive Officer  
Luckey Farmers Inc.  
Woodville, Ohio