National Grain and Feed Association

Arbitration Decision

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February 6, 2003

Arbitration Case Number 2018

Plaintiff: **Miami Valley Organic Farms, Pleasant Hill, Ohio**

Defendant: **Clarkson Grain Co. Inc., Cerro Gordo, Ill.**

Statement of the Case

This case involved a contract for the sale of wheat by Miami Valley Organic Farms ("Miami Valley") to Clarkson Grain Co. Inc. ("Clarkson Grain").

The contract (#P-8779) specified 2,550 bushels of "OFWT-ORG FEED WHEAT" to be delivered "FOB FARM" during April-May 2001. Two loads were delivered and accepted without issue on May 14 and May 15, 2001. On May 17, 2001, a third load was picked up by truck at Miami Valley's farm in Pleasant Hill, Ohio. This final load was rejected at Clarkson Grain's facility in Beardstown, Ohio, on May 18, 2001, and ultimately was sold to an ADM/GROWMARK facility in St. Louis, Mo., on May 21, 2001.

The parties disputed the facts relating to the loading and handling of the third shipment. David Hess of Miami Valley claimed that on May 18, Clarkson Grain informed him that the last load contained 3 to 4 percent weevil damage, and that no other problems were detected. Allegedly, he then objected to this load not being applied to the contract, stating that weevils should not disqualify the load from meeting grading standards and stating that Clarkson Grain previously assured him that "bugs would not be a problem." Hess maintained that he was never given the requisite options or control on the disposition of the rejected wheat.

Further, Hess contended that he first became aware on May 23, 2001 of other alleged problems with the third load (in addition to weevils), when he received a letter from Clarkson Grain and an internet scale ticket from the St. Louis ADM facility, indicating that the wheat was musty and damaged (38.9 percent) beyond U.S. No. 2 grade specifications. Miami Valley challenged whether the scale ticket related to its wheat on the basis that the third load was from the same bin as the first two loads (which were of acceptable quality) and about 260 bushels left over from the third load (which did not fit on the last truck and were deposited at a local elevator without issue). Miami Valley also allegedly sought proof, including documentation from the Beardstown or other facilities that purportedly rejected this load, but never received it.

Clarkson Grain disputed that any of its people advised Hess that the only problem with the third load involved weevils. Rather, Clarkson Grain asserted that the third load was rejected at the Beardstown facility on May 18, 2001, after determining that it was of poor and substandard quality. After what it said were repeated attempts to contact Hess and several unsuccessful efforts to find a market for this grain, Clarkson Grain claimed it finally was able to sell the wheat on Monday, May 23, 2001 to the St. Louis facility. Clarkson Grain questioned whether the left-over grain deposited by Miami Valley at the local elevator was indeed drawn from the same bin as the wheat delivered to Beardstown on May 18.

The parties also disputed the timing and extent to which Clarkson Grain tried to contact Hess. The parties further disputed the extent to which Hess may have been given options or control over the disposition of the wheat after it was rejected.

The parties also interpreted their respective obligations under the contract and common trade practices differently. Miami Valley claimed Clarkson Grain took title to the wheat when it was picked up at the farm and that Clarkson Grain should have provided evidence of its condition at the Beardstown destination. Relying upon NGFA Feed Trade Rule 16(B), Miami Valley further asserted that Clarkson Grain failed to provide the required notices and options.

Clarkson Grain, on the other hand, contended that it was obligated only to pay trucking expenses if the grain was applied to the contract, and that the contract no longer governed once the wheat could not be applied as organic wheat. Clarkson Grain contested the applicability of Grain Trade Rule 16(B) to this situation, but it nonetheless claimed it provided the necessary notices to Miami Valley. Clarkson Grain alleged it attempted on several occasions to reach Hess, who, once contacted, refused to cooperate. According to Clarkson Grain, it was simply exercising its right to reject the shipment, and then meeting its trade rules' obligation to mitigate damages.

The Decision

In circumstances where the buyer deems a shipment of grain to be unacceptable and rejects it, the common trade practice is for the buyer to communicate with the seller to determine disposition of that grain. The common practice and reasonably anticipated time period for such communication to occur is at a minimum one business day. Indeed, the NGFA Grain Trade Rules are instructive on this point:

> *"**NGFA Grain Trade Rule 17(B):** If grain is sold by truck, with shipment at Buyer's call, Buyer shall give Seller a minimum of one (1) business day's pre-advice of delivery schedule and billing instructions."*

The related principle that it should be the seller (not the buyer) directing disposition of the rejected grain also is a well-established custom of the trade. It is further a common trade practice to retain a sample of the rejected shipment for later review by the seller.

The preponderance of the evidence in this case indicated that Clarkson Grain failed to give sufficient notice or opportunity to Miami Valley to determine disposition of the grain. By the next business day (the following Monday after May 18, 2001), Clarkson Grain already had disposed of the wheat at the St. Louis facility (after several earlier attempts). Miami Valley received some notification related to the St. Louis facility on the May 23, but no samples or documentation was ever provided indicating the condition of the wheat at the time of delivery on May 18 to the designated destination in Beardstown.

The Award

The plaintiff's damage claims were as follows:

$8,942.51	Wheat Contract #P-8779 (2,555 bushels at $3.50 per bushel)
$ 360.00	Legal Fees
$ 202.50	Legal Fees
$ 318.99	Interest for 217 days on $8,942.51 at 6 percent as of Jan. 28, 2002
$ 9,824.00	**Total Claims**

The plaintiff also sought compound interest at 10 percent from Jan. 28, 2002. The arbitrators noted that Miami Valley incorrectly claimed the contracted quantity as 2,555 bushels – not 2,550 bushels as actually stated in the contract. Clarkson Grain agreed that it owed $5,812.56 for the first two loads of wheat. (Clarkson Grain's position is that it owed only $143.76 for the third load, less freight expenses and arbitration costs).

Based upon the evidence, the arbitrators denied Miami Valley's claim for interest, and ordered that Clarkson Grain pay Miami Valley the following to resolve this dispute:

$8,925.00	2,550 bushels at $3.50 per bushel
$ 562.50	Legal Fees (Less discounts on third load; - 805.9 bushels)
(-)$ 137.00	17 cents per bushel (test weight discount)
(-)$ 80.50	10 cents per bushel (moisture discount)
$9,270.00	**Total Award Due Plaintiff**

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

Steve Sturm, *Chair*
Feed Department Manager
All-American Co-op
Stewartville, Minn.

Kent Prickett
Farmers Grain Co.
Pond Creek, Okla.

James Rotramel
Manager
Robinson Grain Co. Inc.
Panhandle, Texas