National Grain and Feed Association
Arbitration Decision
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September 24, 2009

Arbitration Case Number 2229

Plaintiff: **West Plains Co., Hay Springs, Neb.**

Defendant: **Don Thomas, Alliance, Neb.**

Statement of the Case

The dispute in this case revolved around Don Thomas' alleged failure to complete delivery on a 45,000-bushel corn contract in January 2008 to West Plains Co (West Plains), the buyer. The contract was "FOB" Thomas' farm in Alliance, Neb., with the seller having the right of first refusal in hauling the corn.

Thomas claimed that he was not given adequate delivery times to complete the contract by the January 2008 due date, and that West Plains failed to perform under NGFA Grain Trade Rule 28(B) *[Buyer's Non-Performance]*. For these reasons, Thomas said, he advised West Plains on Feb. 18, 2008, that he was canceling the contract, and would continue delivery only if a $1-per-bushel premium was paid to bring the contract balance to the then-current market value.

The Decision

The arbitrators agreed unanimously that the applicable NGFA Trade Rule in this case was NGFA Grain Trade Rule 28(A), which addresses "Seller's Non-Performance," as argued by West Plains, and not Grain Trade Rule 28(B), as claimed by Thomas. The arbitrators based their decision upon the fact that Thomas continued to make deliveries of corn in February – after the January contract due date – demonstrating that the shipment period under the contract had been extended willingly. In addition, the arbitrators noted the existence of signed affidavits stating that West Plains had offered to pick the grain up with its trucks or permit Thomas to deliver to other locations to complete the contract in a timely fashion. Since Thomas declined West Plains' offer to haul the corn, the arbitrators determined that he again was demonstrating a desire to extend the contract under NGFA Grain Trade Rule 28(A).

In addition, the arbitrators noted various potential discrepancies relating to the bushel amount being disputed. The arbitrators would have been interested in more complete detail than was presented by the parties in their arguments.

Therefore, the arbitrators ruled unanimously in favor of West Plains, finding that Thomas' unilateral cancellation of the contract in February 2008 was improper based upon the facts presented in this case and the NGFA Grain Trade Rules.

The Award

The arbitrators awarded damages to West Plains in the amount of $21,416.86 for the costs incurred when Thomas failed to deliver the remaining 14,699.073 bushels of corn under the contract.

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

Chad J. Nagel, *Chair*
Manager of Trading
Wye Mills Grain
Wye Mills, Md.

Robert E. Burkhardt
Chief Financial Officer
MaxYield Cooperative
West Bend, Iowa

Mike Nickolas
Grain Marketing Manager
North Central Farmers Elevator
Ipswich, S.D.