National Grain and Feed Association

Arbitration Decision

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December 2, 2010

Arbitration Case Number 2433

Plaintiff: **Lansing Trade Group LLC, Overland Park, Kan.**

Defendant: **National Food Corp., Everett, Wash.**

Statement of the Case

Lansing Trade Group LLC (LTG) and National Food Corp. (NFC) entered into various forward contracts for corn for July/September/October delivery that were brokered by a third party. The parties had a trading history with each other prior to this event.

Pursuant to paragraph (C) of NGFA Grain Trade Rule 3 [Confirmation of Contracts], when a trade is made through a broker, it shall be the broker's contract that governs. Both parties relied upon NGFA Grain Trade Rule 28 [Failure to perform] as the basis for their respective claims.

Throughout the course of their dealings, LTG had sold corn to NFC and had fallen behind on shipments. LTG continued to apply cars through the broker to NFC, which NFC accepted and applied to open contracts.

NFC also made settlement on contracts numbers 7772 and 7876, with no discounts taken at the time of settlement. Some of the broker contracts had designated shipment periods and some had shipment periods with an additional statement, "As Available," as part of the delivery period.

LTG applied cars to all the contracts executed with NFC. LTG represented that there was an agreement on the late charges on two of the contracts – contract numbers 8118 and 8119.

NFC agreed there were discussions about late charges, but stated that the parties never agreed upon the assessment of late charges. NFC deducted $143,911.26 from the payment to LTG as an adjustment it calculated based upon the market prices on the shipment date compared to the prices in the sales confirmation.

The parties could not agree on the assessment of late penalty fees, and elected to submit the dispute to NGFA Arbitration.

The Decision

The arbitrators agreed that NGFA Grain Trade Rule 28 [Failure to Perform] was the correct trading rule governing this dispute.

NFC alleged that LTG neglected to provide proper notification that it was going to be late delivering on the contracts; therefore, NFC said it did not put LTG on notice as to what action it was going to take under such a circumstance.

Because of the lack of action by both parties, and the fact that NFC continued to accept railcar shipments and to apply them to the open contracts, the arbitrators concluded that NFC had agreed to a contract extension.

NFC also raised issues with the "As Available" wording on the broker's contract. Pursuant to NGFA Grain Trade Rule 3(C), it is the parties' responsibility to notify the broker of any differences or issues immediately after receipt of the contract, and NFC failed to do so.

The final issue to be addressed by the arbitrators was the discounts that should be applied. The arbitrators determined that both parties failed to provide proof of any paper or email communication of this dispute taking place at the pertinent time. There were only telephone conversations that have been represented by both parties, during which a 10-cent-per-bushel discount was discussed. LTG stated that NFC agreed to the discount, which was disputed by NFC. Given that both parties agreed there was a discount discussion of 10 cents and that NFC failed to offer any alternative (other than what NFC elected unilaterally to accept later when making final settlement), the arbitrators concluded that the 10-cent-per-bushel discount was appropriate.

The Award

There were six contracts involved in this dispute – contract numbers 7772/52946, 7876/53006, 8116/53074, 8118/53075, 8117/53076 and 8119/53077.

The arbitrators concluded that no discounts should be applied to contract numbers 7772/52946 and 7876/53006, and that the balance of the contracts should have the 10-cent-per-bushel discount applied.

Therefore, the arbitrators directed that NFC pay LTG an award in the amount of $136,717.34, calculated as follows: 71,939.53 bushels x $0.10 cents = $ 7,193.95; NFC deductions $143,911.29 - $ 7,193.95 = $136,717.34. The arbitrators declined to award interest.

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

John Ade, *Chair*
Vice President, Grain Sales and Merchandising
Perdue Grain & Oilseed LLC
Salisbury, Md.

Ben Baer III
President
Livestock Nutrition Center
Memphis, Tenn.

Wendy Scarff
Merchandising Manager
TriOak Foods Inc.
West Burlington, Iowa