



National Grain and Feed Association Arbitration Decision

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March 21, 2014

CASE NUMBER 2452

Plaintiff: FRM Farms, Gothenburg, Neb.

Defendant: The Andersons, Inc., Maumee, Ohio

STATEMENT OF THE CASE

This case concerned a dispute between FRM Farms (FRM) and The Andersons, Inc. (Andersons) over contractual pricing terms involving food grade yellow corn.

On February 13, 2008, FRM, as the seller, entered into a “Corn Purchase Agreement” with Andersons, as the buyer. Also on February 13, 2008, the parties entered into eight individual purchase contract confirmations (numbered 171558, 171559, 171560, 171561, 171562, 171563, 171564 and 171565) for a total of 282,000 bushels of yellow corn. The purchase contract confirmations provided for delivery to a third-party’s facility in Gothenburg, Neb., over the course of eight separate delivery periods – the fall of 2008, December 2008, February 2009, March 2009, April 2009, May 2009, June 2009 and July 2009. The confirmations also provided that the provisions of the Corn Purchase Agreement between the parties were incorporated into the purchase contracts.

FRM claimed that Andersons attempted to unilaterally amend the pricing procedures on those eight contracts for yellow corn entered into between the two parties.

This dispute also included open orders placed by FRM and accepted by Andersons on June 17, 2008, totaling 132,000 bushels of yellow corn to be sold by FRM to Andersons at various futures levels if the CBOT prices reached those levels. 78,000 of the total 132,000 bushels were priced at that time.

FRM stated that on June 26, 2008, it contacted Andersons to price 272,000 bushels under the purchase contracts. FRM claimed that it was informed at this time that Andersons had initiated a 50,000 bushel daily limit on pricings of corn for the Gothenburg facility. No bushels were priced on June 26, 2008 by Andersons. The market allegedly never recovered to the levels of June 26, 2008.

FRM is claiming damages from Andersons in the amount of \$1,145,899.00, plus attorney’s fees, reimbursement for NGFA arbitration service fees of \$6,851.20, and interest at the rate of 18% per annum [or pursuant to Section 8(m) of the NGFA Arbitration Rules].

THE DECISION

The arbitrators denied FRM’s claim based upon the argument that Andersons, unilaterally, amended the pricing procedures without FRM’s approval. The Corn Purchase Agreement signed by FRM clearly permitted Andersons to impose such purchase limitations based upon prevailing market conditions. Exhibit 1 to the agreement under “*PRICING DATES*” specifically stated: “*Please contact one of our staff on current pricing allowances. For all years, allowances and fees for establishing price will be subject to change based on the market climate.*” The arbitrators concluded that Andersons’ imposition of the daily pricing limit was conducted in good faith given the volatile market conditions prevailing at that time.

The arbitrators agreed with FRM's argument that Andersons should be liable for any unpriced open orders. The arbitrators determined that once Andersons unconditionally accepted the open orders from FRM on June 17, 2008, Andersons became obligated to price those orders within a reasonable time. However, Andersons did not price 54,000 bushels under those open orders within the applicable futures period (prior to March 1, 2009). The futures price the day before the first notice day for March of 2009 futures was \$3.5075. Consequently, the arbitrators concluded that FRM had an open order to be filled at \$8.10 that Andersons failed to execute.

THE AWARD

The arbitrators therefore awarded damages to FRM in the principal amount of \$247,995.00 ($\$4.5925 \times 54,000$ bushels). The arbitrators determined to exclude the extended period during which this case was stayed at FRM's request with the consent of Andersons in their calculation of interest to award to FRM. The arbitrators consequently awarded interest on the principal amount at the rate of 3.25% (pursuant to NGFA Arbitration Rule 8(m)) from March 1, 2009 through October 31, 2009 (representing \$5,359.33), and then from April 1, 2012 through the date of this award (representing \$7,052.17).

Therefore, the total award due to FRM from Andersons is \$260,406.50.

Decided: February 14, 2013

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

Steven Domm, *Chair*
General Manager
Central Farmers Cooperative
Marion, S.D.

Bart R. Banks
General Counsel
Dakota Mill & Grain, Inc.
Rapid City, S.D.

Craig Kilian
Grain Division Manager
Watonwan Farm Service Co.
Truman, Minn.

March 21, 2014

ARBITRATION APPEAL CASE NUMBER 2452

Appellant/Defendant: The Andersons, Inc., Maumee, Ohio

Appellee/Plaintiff: FRM Farms, Gothenburg, Neb.

DECISION OF THE APPEALS COMMITTEE
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The original arbitration committee decided this case in favor of the plaintiff, FRM Farms (FRM), holding that the defendant, The Andersons, Inc. (Andersons), failed to execute a pricing order received from FRM. Andersons subsequently appealed the decision of the original arbitration committee.

The undersigned arbitration appeals committee then, individually and collectively, reviewed all the arguments, supporting record, and exhibits pertaining to this case along with the findings and conclusions of the original arbitration committee. The appeals committee also reviewed the briefs filed in conjunction with this appeal.

The essential question presented in this appeal was to determine to what extent Andersons could limit pricing by FRM of existing basis contracts during a period of extreme market volatility.

In its appeal brief, Andersons argued that the market volatility at that time necessitated a restrictive purchasing policy. The appeals committee concluded, however, that the contracts and pricing orders in this dispute were not new purchases or “offers to sell” and, thus, the pricing mechanics in the existing contracts would govern.

The relevant contract language in this case provided the seller, FRM, the right to place pricing orders with Andersons, although the contract terms also provided for some limits on pricing (the “pricing allowances”) to be determined by Andersons.

The contract language, however, was unclear on whether these “pricing allowances” may be imposed (as Andersons claimed) as daily quantity restrictions on the number of bushels for cash grain forward contracts (e.g., a daily limit of 50,000 bushels) or as a percentage of total grain sold by individual customers (e.g., a limit of 60% of total corn sold), which would be determined at Andersons’ discretion as crop development progresses during the growing season.

The arbitration appeals committee determined that the record of the case reflected that these “pricing allowances” were only restrictions on the percentage of corn priced, and not the amount of grain that could be priced on a single day. Thus, the arbitration appeals committee concurred with the original arbitration committee’s decision that Andersons was obligated to execute the pricing orders it accepted on 54,000 bushels of FRM’s basis contracts.

FRM argued throughout the original case and this appeal that it had attempted to price its entire contractual obligation on June 26, 2008, and Andersons wrongfully failed to allow it to do so. Andersons disputed that this attempt at pricing by FRM occurred and that, in any event, the “pricing allowances” restriction would have precluded that pricing approach. At that time, FRM had working pricing orders that would have taken its percentage up to the 60% level “pricing allowance,” which Andersons had in effect at that time. Andersons was able, under the contract, to deny FRM pricing of the entire balances of these contracts at that time.

In its appeal, Andersons also argued that the original arbitration committee wrongfully calculated damages by relying upon a date that Andersons claimed was arbitrary. Andersons argued that neither the contract language nor the NGFA Trade Rules provided that the contracts be priced by the day prior to *first notice day* for the futures month in question. However, the appeals committee concluded that based upon the record of the case the parties had failed to provide a better alternative method for setting a date for pricing.

In its appeal brief, Andersons did argue – for the first time – for an alternative date and settlement price. However, that argument would only have been supportable by the inclusion of “new evidence,” which is disallowed at the appeal level pursuant to the NGFA Arbitration Rules. Specifically, NGFA Arbitration Rules Section 9(a) states as follows:

Arguments on appeal shall be confined only to the facts contained in the record of the case. Any new evidence submitted in violation of this rule may be removed from the argument upon request of the National Secretary, or if necessary the chairman of the Arbitration Appeals Panel shall instruct the panel to disregard the new evidence.

Absent the provision of a more specific pricing method in the contract documents or better documentation in the record of the case related to pricing confirmations or notices of pricing status, the arbitration appeals committee concurred with the original committee that the trade practice of relying upon the day prior to *first notice day* was appropriate.

Therefore, the arbitration appeals committee affirmed the decision and award of the original arbitration committee.

Decided: March 10, 2014

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

Roger Krueger, Chair
Senior Vice President, Grain
South Dakota Wheat Growers
Association
Aberdeen, SD

John Anderson
Chief Executive Officer
Ritzville Warehouse Co.
Ritzville, WA

Edward Milbank
President
Milbank Mills Inc.
Chillicothe, MO

Steven Nail
President & CEO
Farmers Grain Terminal Inc.
Greenville, MS

Steve Young
Grain Merchandiser
Grainland Cooperative
Holyoke, CO