National Grain and Feed Association

Arbitration Decision

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July 14, 2011

Arbitration Case Number 2485

Plaintiff: **Tate & Lyle Ingredients Americas Inc., Decatur, Ill.**

Defendant: **Garrett Enterprises Inc., Lebanon, Va.**

Statement of the Case

This case concerned three contracts for the sale of 2,925 tons of corn gluten feed pellets from Tate & Lyle Ingredients Americas Inc. (Tate & Lyle) to Garrett Enterprises Inc. (Garrett). Each contract was signed by both parties, and contained the following specifications:

Contract Number	Date Executed	Tons	Price/Ton	Pick-Up Period
40139069	Sept. 19, 2008	2,000	$145	Oct. 1, 2008-March 31, 2009
40143006	Feb. 3, 2009	300	$136	Feb. 1-March 31, 2009
40143249	Feb. 19, 2009	625	$106	Feb. 19-April 30, 2009

Tate & Lyle alleged that Garrett breached the contracts by failing to pick up the contracted amount of feed. According to Tate & Lyle, Garrett purchased only 956 tons of feed under the contracts within the specified time period. Garrett claimed that market conditions made it impossible to perform under the existing contracts.

During the delivery period for the three contracts, Garrett also purchased feed from Tate & Lyle on a spot basis. Garrett allegedly believed that the volumes purchased on a spot basis were going to be applied to the existing contracts. Tate & Lyle argued that Garrett had no reason to believe that these loads were being applied to the contracts because they were priced cheaper than the contracted loads. Nonetheless, Garrett alleged that it had fulfilled its obligations under the three contracts in dispute, since the total amount of feed that it purchased from Tate & Lyle during that time period exceeded the contracted amount.

Tate & Lyle and Garrett also entered into three additional contracts during the same time period, which, according to Garrett, further led it to believe that the previous long-term contracts already had been fulfilled. These subsequent contracts were fulfilled and were not in dispute.

Tate & Lyle claimed $101,344 as a result of Garrett's alleged default on the three contracts. In calculating the damages, Tate & Lyle used the market price on Aug. 27, 2009 (the date the contracts were cancelled) as the cancellation price for all three contracts. Garrett disputed that it owed any damages at all, but argued that if damages were to be calculated, the price during the month that each contract was to be filled should be used, rather than the price on the date of cancellation. Specifically, Garrett argued that the default date for each contract should be the business day following the expiration date of the contract, which according to Garrett would be April 1, 2009 for contract numbers 40139069 and 40143006, and May 1, 2009 for contract number 40143249.

The Decision

Tate & Lyle claimed to have had numerous telephone conversations with Garrett during the spring and summer of 2009 to address the delinquent pick-up. However, the arbitrators noted that there were no emails or other written records presented by either party. There also were no written modifications to any of the contracts.

It was difficult to determine what exactly the parties discussed in these telephone conversations and it seemed unlikely to the arbitrators that Tate & Lyle had asked Garrett about being behind in taking delivery on the three contracts. Tate & Lyle assumed that the subsequent business was for spot contracts that would not be applied to the existing longer-term contracts, without discussing with Garrett the fact that the long-term contracts had not been filled yet.

The arbitrators also called into question the fact that Tale & Lyle signed contract numbers 40143006 and 40143249 with Garrett on Feb. 3, 2009 and Feb. 19, 2009, respectively, when by that time Garrett already was as far behind as was alleged on the first contract, number 40139069, which was executed on Sept. 19, 2008.

The arbitrators determined that Tate & Lyle did not provide Garrett proper notice about being in default on its contracts, and in fact did not follow the procedures specified in the Terms and Conditions section of its own contract, which stated, "Seller shall not be obligated to sell or cancel until the expiration of the delivery period or periods." Tate & Lyle waited to cancel the contracts until far beyond the expiration of the delivery periods.

Therefore, the arbitrators concluded that the cancellation dates for the contracts should have been April 1 and May 1, 2009, respectively, rather than Aug. 27, 2009 as Tate & Lyle claimed.

The Award

The arbitrators determined that Garrett did default on its purchase contracts by not taking delivery of the product within the specified terms of the contracts. The arbitrators also concluded that Tate & Lyle did not follow the terms of its own contracts because it failed to contact Garrett at the expiration of the contracted delivery period.

For these reasons, the arbitrators awarded Tate & Lyle the sum of $61,964, for damages represented by the value of the feed that was not picked up by the time that the various contracts had expired, using the difference between the contracted price and the spot price of the ingredient on the day following the expiration of each contract.

The arbitrators also awarded interest at a rate of 3.25 percent from the date of this decision until paid in full.

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

David Reiff, *Chair*
President
Reiff Grain & Feed Inc.
Fairfield, Iowa

Scott Bunz
Senior Director of Renewable Fuels
Gavilon Grain LLC
Omaha, Neb.

Joel Karlin
Market Analyst/Merchandiser
Western Milling, LLC
Goshen, Calif.