



National Grain and Feed Association

Arbitration Decision

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May 3, 2012

Arbitration Case Number 2538

Plaintiff: Lansing Trade Group LCC, Overland Park, Kan.

Defendant: Zolman Farms Inc., Warsaw, Ind.

Statement of the Case

This case involved a dispute between Zolman Farms Inc. (Zolman) and Lansing Trade Group LCC (Lansing) arising from two cars of corn shipped to Kent Nutrition in Augusta, Maine, which were rejected and returned to Zolman's facility.

On July 16, 2010, Zolman sold 10,500 bushels of corn to Lansing. On July 21, 2010, Zolman sold to Lansing an additional 21,000 bushels. These contracts were signed by both parties. Nine railcars were subsequently billed out of Zolman's facility in Cromwell, Ind. under the contracts to Kent Nutrition: eight on Aug. 20, 2010, and one on Aug. 26, 2010. Payment on these cars was made by Lansing while the cars were in-transit.

On Sep. 20, 2010, two cars were rejected because of alleged issues concerning low quality, heating and a musty odor. The cars were re-billed back to Zolman. Over the course of the next two and a half months there were communications between the parties as to who was responsible for the costs incurred concerning these cars. Lansing cancelled the under-filled portion of the contracts attributable to the two rejected cars at issue on Dec. 6, 2010.

Lansing alleged that Zolman was in default on the two contracts because the corn in the two railcars did not arrive "cool and sweet" as specified under the general terms and conditions of the contracts. Lansing stated that Zolman was notified in a timely manner that the cars were being rejected. Lansing further claimed that Zolman instructed Lansing to return the cars to Zolman's elevator in Cromwell. According to Lansing, however, Zolman subsequently refused to load any cars to replace the rejected cars.

Lansing then submitted a request for arbitration with the National Grain and Feed Association (NGFA) to resolve the matter. In doing so, Lansing claimed the following:

- ▶ Lease costs incurred during the time from the initial loading until the remaining balance of the contract was cancelled.
- ▶ Payments for the two cars made while the cars were in route.
- ▶ Lease costs on the two defaulted cars from the time of loading until Dec. 6, 2010.
- ▶ Interest on the amount due.

In its claims, Zolman alleged that the corn was sold F.O.B. Cromwell and that title passed when the cars left its facility. Zolman argued that transit time to the unloading elevator was excessive (over 20 days), and that this was a possible cause of the deterioration of the corn. Furthermore, Zolman maintained that Lansing did not inform it of the rejection of the cars in a timely manner. Zolman also argued it did not agree to take the cars back into its Cromwell facility. Ultimately, Zolman did take possession of the cars and unload them.

Breakdown of Claims:

Lansing claimed the following damages in its arguments:

	Contract 81608	Contract 81634
Cancellation Futures Value	\$ 5.6	\$ 5.6
Cancellation Basis Value	\$ (0.17)	\$ (0.17)
Cancellation Price	\$ 5.5	\$ 5.5
Contract Price	\$ 3.7	\$ 3.6
Cancellation Damages/per bushel	\$ 1.7	\$ 1.8
Bushels Remaining	3,500	3,500
Total Due LTG	\$ 6,090.00	\$ 6,580.00
Total Cancellation Fees	\$ 12,670.00	
Freight Costs to Original Destination	\$ 8,432.70	
Reimbursement for Corn Payment	\$ 25,865.00	
Lease Cost	\$ 2,335.00	
TOTAL Lansing Claim	\$ 49,302.70	

The arbitrators noted that in a letter (dated Dec. 7, 2010) from Zolman to Lansing that was included as an exhibit with Lansing's first argument, Zolman claimed various specific damages:

Discounts on corn Zolman incurred	\$ 10,500.00
Installing Auger	\$ 3,500.00
Extra Labor	\$ 500.00
Trucking and Blending	\$ 4,500.00
Demurrage	\$ 12,000.00
Total Due Zolman	\$ 31,000.00

In its own first argument, however, Zolman stated that it had ultimately decided upon a different course, including stopping payment on funds paid to Lansing, "in lieu of" of pursuing claims and counterclaims on its own behalf.

The Decision

While both contracts stated that settlements would be on submitted origin grades and weights, they both stated the following in the "CONTRACT TERMS AND CONDITIONS" section:

Seller guarantees the commodity delivered shall:
 (a) not be adulterated or misbranded; (b) free of crotalaria; (c) be fit for consumption in the intended destination market; and (d) be cool and sweet and free of infestation.

The arbitrators determined that the shipment period was extended due to various circumstances and that while the delay was unfortunate, it was still reasonable and did not relieve Zolman of its contractual obligations regarding guarantee of quality.

The arbitrators concluded that two cars in questions did not arrive sweet and cool. The arbitrators determined that Lansing notified Zolman in a timely manner concerning the rejection of the cars at the destination. Therefore, the arbitrators concluded that Zolman was responsible for all costs incurred by Lansing as the result of the rejection of the cars.

In its submitted arguments and documentation, the arbitrators found that Zolman failed to demonstrate why it would not be at fault. The arbitrators also determined that Zolman failed to provide support for any damages that it may have at one time claimed. Therefore, to the extent that Zolman was pursuing damages or a counterclaim of its own, they were denied by the arbitrators.

With respect to Lansing's assessment of damages, Lansing included a request for \$2,335 to cover lease expenses on the two cars from the day they were loaded until they were subsequently released after it was determined that Zolman was not

going to reload the cars. However, the arbitrators concluded that the first chargeable day should have been when they were released back to Zolman at destination. Therefore, the arbitrators reduced this component of the award by \$805.

The Award

Based on all the information provided in this case, the arbitrators awarded Lansing Trade Group \$48,497.71, plus interest from Sept. 22, 2010 at a rate of 3.25% per annum, pursuant to NGFA Arbitration Rule 8(m).

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

Paul Coppin, Chair
General Manager
Reynolds United Cooperative
Reynolds, N.D.

Douglas Balvin
General Manager
Canby Farmers Grain Company
Canby, Minn.

Tim Coppage, Jr.
Merchandising Leader
Cargill, Incorporated
Cordova, Tenn.