



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922

Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

October 3, 2013

Arbitration Case Number 2571

Plaintiff: Jack Jennings, Odessa, Mo.

Defendant: The Scoular Company, Harrisonville, Mo.

Statement of the Case

This case concerned a contract between the seller, Jack Jennings (Jennings), and the buyer, The Scoular Company (Scoular), for 40,000 bushels of U.S. number 2 yellow corn for delivery to Scoular's facility in Harrisonville, Mo., at the price of \$4.71 per bushel.

Scoular and Jennings entered into a verbal contract on Oct. 7, 2010. Scoular stated that on Oct. 11, 2010, it sent a purchase confirmation to Jennings (confirmation number PC1644503). The purchase confirmation identified "October 2010" as the "Shipment Period." The purchase confirmation also contained a reference to the NGFA Trade Rules and NGFA Arbitration as the "Governing Trade Rules." Jennings stated that he did not receive the purchase confirmation until mid-November. Jennings further stated that he never signed the purchase confirmation.

Jennings claimed that under the Oct. 7 verbal contract, he had agreed to deliver the corn in the last two weeks of October 2010. Jennings stated that the deliveries which occurred earlier in the month were based upon his telephone call with a Scoular representative on Oct. 11. On Oct. 11, Jennings delivered one load of 898.93 bushels of corn to Scoular. On Oct. 12, Jennings delivered another two loads of corn to Scoular – one consisting of 941.07 bushels and the other for 993.21 bushels. There was no dispute between the parties that Jennings delivered the three loads at the agreed-upon price of \$4.71 per bushel.

Scoular claimed that its grain merchant and Jennings spoke by telephone on Oct. 14, and that during this conversation Jen-

nings indicated he would continue to deliver corn to Scoular during the following week. However, Jennings made no further deliveries according to Scoular. Scoular further stated that it subsequently made repeated attempts to contact Jennings through October and November 2010 regarding remaining deliveries under the contract. According to Scoular, its grain merchant eventually was successful in reaching Jennings by telephone on Nov. 9, and during that conversation, Scoular said Jennings indicated he would not be delivering the remaining 37,166.79 bushels of corn. On Nov. 17, Scoular cancelled the contract for Jennings' account at what it termed a fair market value of \$5.30 per-bushel.

Jennings claimed that because the verbal agreement was for delivery of the corn over the last two weeks of October 2010 – not earlier in the month as Scoular subsequently maintained – that Scoular violated the material terms of the contract and that he no longer was bound to the agreement. Scoular alleged that Jennings' failure to deliver additional loads under the contract was triggered by increases in the prevailing market price for corn. Scoular asserted that the Chicago Board of Trade closing price for corn increased from \$4.98 per bushel on Oct. 7 to \$5.63 per bushel on Oct. 15.

Regarding the purchase confirmation, Jennings claimed that it was not mailed to him until mid-November. Scoular maintained it mailed the purchase confirmation to Jennings on Oct. 11, and that according to its standard practice, Scoular re-sent a copy of the original to Jennings in late October and again in November when it cancelled the contract.

The Decision

The arbitrators noted that Jennings did not dispute that the parties had agreed to an oral contract. Therefore, it was undisputed that there was a contract between the parties.

NGFA Grain Trade Rule 1 [Trade], in relevant part, states as follows:

Both the Buyer and the Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Date of contract
- (B) Quantity
- (C) Kind and grade of grain including type, class and quality characteristics (if any)
- (D) Price or pricing method
- (E) Type of inspection
- (F) Type of weights
- (G) Applicable Trade Rules
- (H) Transportation specifications: (1) Type of conveyance, (2) Type of billing (a) Export (b) Multi-car specifications, (3) Point of origin or delivery or rate basing point, (4) Loading weight requirements, (5) Time of shipment or delivery, (6) Route, (7) Responsibility for freight increases or decreases, (8) Buyer's or Seller's conveyance, (9) Type of bill of lading, (10) Length of time permitted for loading or unloading, (11) Mechanical seals
- (I) Payment terms
- (J) Other terms

The arbitrators concluded that in this case, the requirements and specifications set forth in NGFA Grain Trade Rule 1 were satisfied, thereby confirming the trade.

The arbitrators noted that the purchase confirmation identified "October 2010" as the delivery period pursuant to NGFA Grain Trade Rule 18 [Time of Shipment or Delivery]. The arbitrators determined that although Jennings argued that the purchase confirmation did not apply and that the oral agreement between the parties was altered when the shipment period was changed to the Monday and Tuesday of the last two weeks of

October 2010 (Oct. 18-19 and Oct. 25-26), Jennings apparently accepted the alleged alteration because he made arrangements for a trucking company to deliver on those four dates. Jennings reneged on that commitment by not delivering any loads on those days or subsequently.

With respect to the issuance of the purchase confirmation, the arbitrators noted that pursuant to NGFA Grain Trade Rule 3 [Confirmation of Contracts] it should have been sent on Oct. 8 – not on Oct. 11 (which is when Scoular contended the original confirmation first was issued). Notwithstanding the arguments concerning the timing and application of the written purchase confirmation, the arbitrators noted that the parties continued to make arrangements and otherwise communicate during the anticipated delivery period. The arbitrators did not agree with Jennings' argument that the communications with Scoular that led to the deliveries in the first half of the month (to which Jennings agreed) constituted a breach of the contract such that Jennings no longer was bound to make any further deliveries under the contract for the rest of the month.

With respect to Scoular's cancellation of the contract, the arbitrators concluded that based upon NGFA Grain Trade Rule 28 [Failure to Perform], Scoular should have relied upon Nov. 10 (the next business day after Jennings stated he had no intention of delivering on the contract) – and not Nov. 17 – as the cancellation date upon which to base its damages. Accordingly, the arbitrators calculated damages as follows:

\$5.6625 (CZ price at the close on November 10)
+.04 basis = \$5.7025 cash spot price

(-) contract price of \$4.71 contract price per bushel
= price difference of \$0.9925 per bushel

For a total price difference of \$36,888.04 on the 37,166.79 undelivered bushels

(-) net value of the three delivered loads \$13,344.42
(2833.21 bu. x \$4.71)

= total owed by Jennings to Scoular of \$23,543.62

The Award

The arbitrators ruled in favor of Scoular in the amount of \$23,543.62. The arbitrators declined to award interest to Scoular, particularly given that it had not yet paid for the \$13,344.42 worth of corn delivered.

Dated: August 14, 2013

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

Harry Bormann, *Chair*

Grain Team Leader
MaxYield Cooperative
West Bend, Iowa

Dan Beard

Manager
Demeter L.P.
Crystal Lake, Ill.

Jeffrey K. Brooks

General Manager
Grainland Cooperative
Eureka, Ill.