



January 9, 2014

## CASE NUMBER 2635

**Plaintiff:** Cargill Inc., Minneapolis, Minn.

**Defendant:** Gary Stelpflug and Danielle Stelpflug, Lancaster, Wis.

### STATEMENT OF THE CASE

This dispute involved 10 grain contracts between the sellers, Gary and Danielle Stelpflug (Stelpflug), and the buyer, Cargill, Incorporated through its Ag Horizons Business Unit (Cargill).

Cargill claimed that Stelpflug failed to deliver on six 2010 corn contracts for a total of 40,000 bushels of U.S. No. 2 yellow corn (collectively, “the 2010 contracts”) as well as three 2011 corn contracts for a total of 20,000 bushels of U.S. No. 2 yellow corn and one 2011 soybean contract for 5,000 bushels of U.S. No. 1 yellow soybeans (collectively, “the 2011 contracts”). The parties entered into these contracts between Nov. 26, 2008 and Feb. 24, 2010. The contracts provided for shipments of the grain during various periods between November 2010 and November 2011. Dubuque, Iowa was the originally designated delivery point in each contract.

The parties did not dispute that they entered into the contracts freely nor did the parties dispute the terms of the original contracts. This dispute arose after Cargill sought to change the delivery point in each contract from Dubuque, Iowa to East Dubuque, Ill.

Paragraph 8 in each of the contracts stated as follows :

**Alternate Delivery.** Buyer shall have the right to designate any reasonable alternate delivery points if necessary to expedite or facilitate Seller’s performance of this Contract but shall have no obligation to do so. Increased shipping charges under this provision shall be for Seller’s account and reductions in shipping charges shall be for Buyer’s account; provided, however, that if the designated alternate delivery points are solely for Buyer’s convenience, increased shipping charges shall be for Buyer’s accounts.

Cargill argued it had the right to amend the contract by designating the Illinois location as what it referred to as a “reasonable alternate delivery point” under the terms of the contract. Stelpflug argued that because the change of delivery point was “for Buyer’s convenience” then Cargill was responsible for increased shipping charges under the terms of the contract.

Stelpflug stated that Cargill advised in March 2010 that it was moving its operations to Illinois. On May 27, 2010, Stelpflug provided a handwritten letter to Cargill outlining his proposal whereby the parties had three options to resolve the dispute: 1) honor the delivery point in Iowa as specified in the original contracts; (2) compensate Stelpflug with another 11-cents per bushel for additional costs to ship the grain to the new delivery point in Illinois; or (3) cancel the contracts. Stelpflug argued that the additional 11-cents per bushel was justified because (unlike in Iowa and Wisconsin that grant exemptions at harvest time for trucking grain) his driver was not licensed or permitted to truck grain into Illinois. According to Stelpflug, he would have been required to employ an outside trucker at significant additional costs to transport the grain to the new location. Stelpflug claimed that between June 15 and July 1, 2010, Cargill relocated to the Illinois facility without responding to the May 2010 letter or otherwise coming to an agreement on the contracts.

Cargill argued that the new delivery point did not create a substantial burden for Stelpflug to perform under the contracts. Cargill denied that the change resulted in increased costs because the new route was only four miles longer. On June 15 and July 8, 2010, Cargill sent to Stelpflug a “Confirmation of Change” to amend the delivery point for each of the contracts to the Illinois location. According to Cargill, after Stelpflug advised that he would not be delivering under the 2010 contracts, Cargill cancelled the 2010 contracts and issued another “Confirmation of Change” on June 6, 2011, which indicated that the 2010 contracts were cancelled. On or about June 8, 2011, Cargill further sent to Stelpflug a notice of cancellation for the 2010 contracts. Cargill also claimed that in June and July of 2011, the parties had various communications by telephone during which Stelpflug denied any duty to deliver grain to Cargill under these contracts.

Stelpflug also wrote to Cargill on June 20, 2011, denying having any open contracts with Cargill as of June 2010. On Aug. 19, 2011, Cargill sent to Stelpflug a demand for adequate assurances of performance related to the 2011 contracts. Cargill stated it cancelled the 2011 contracts after Stelpflug failed to respond to its demand. Cargill then issued a “Confirmation of Change” on Aug. 26, 2011, indicating that the 2011 contracts were cancelled. On Aug. 28, 2011, Stelpflug wrote to Cargill again stating that his driver could not haul grain into Illinois and that he had sold his grain to another elevator after Cargill refused to “make good on its contracts.” On or about Aug. 31, 2011, Cargill further sent to Stelpflug a notice of cancellation for the 2011 contracts.

Cargill also argued in its rebuttal that under NGFA Grain Trade Rules 3 and 4, Stelpflug was required to respond to the “Confirmations of Change” issued by Cargill to amend the delivery point under the contracts. According to Cargill, because Stelpflug failed to respond to Cargill’s notices Stelpflug was then obligated to the new terms pursuant to the NGFA Trade Rules.

Cargill claimed total damages in the amount of \$185,890, plus interest, fees and charges. On June 4, 2012, Cargill filed its complaint for NGFA Arbitration.

Stelpflug also argued that Cargill’s arbitration complaint was untimely under the one-year deadline in the NGFA Arbitration Rules because Cargill cancelled the contracts on June 3, 2011.

## THE DECISION

Based upon an extensive review of the various arguments and documents presented by the parties in this case, the arbitrators reached the following conclusions:

- Stelpflug’s argument that Cargill filed its arbitration complaint too late was without merit. NGFA Arbitration Rules Section 3(d) states in pertinent part as follows:

The original complaint in connection with any disputed matter proposed for arbitration must be filed with the National Secretary within twelve (12) months after a claim arises, or within twelve (12) months after the expiration date for performance of the contract or contracts involved, whichever occurs last ...

However, NGFA Arbitration Rules Section 10(b) provides that when computing time for the filing of papers under these rules, if the “*first or last day falls on a Saturday, Sunday, or a national legal holiday, then the next business day shall be considered the first or last day.*” Although Cargill’s claims may have accrued when it cancelled the contracts on June 3rd of 2011 – June 3rd of 2012 fell on a Sunday. Pursuant to Rule 10(b), the “*last day*” was extended to the next business day which was Monday, June 4, 2012. Therefore, Cargill filed its complaint within the time period prescribed under the NGFA Arbitration Rules.

- The parties did not dispute the validity or the terms of the original contracts. Rather, this case centered upon the question of additional shipping costs involved in the change of delivery points.
- Pursuant to paragraph 8 of the contracts that Cargill prepared and submitted, Cargill did have the right to designate an alternate delivery point. A key element of paragraph 8 was the phrase, “*if the designated alternate delivery points are solely for the Buyer’s convenience, increased shipping charges will be for the Buyer’s account.*” It was clearly and solely for the “*Buyer’s convenience*” that Cargill relocated its operations from Iowa to Illinois. Therefore, under the terms of the contracts, any increase in shipping charges were for the Cargill’s account.
- Cargill denied any increase in costs claiming that the route to the new delivery point was only four miles farther away than the original delivery point. Stelpflug claimed additional costs and burdens resulted from the change of delivery point to a location in Illinois because of the rules and licensing requirements for commercial drivers in that state. Stelpflug contended that he did not have a driver available who could lawfully transport the corn into Illinois. According to Stelpflug, he would have incurred higher shipping costs because he would have been required to hire an outside trucking company to deliver the grain to Illinois in lieu of using his own equipment and employees. Cargill provided no information upon which to refute Stelpflug’s claims of additional shipping costs.
- Nor did Cargill provide support for its own position that the close geographical proximity of the new delivery point alone meant there were no additional shipping costs. Cargill’s claim that Stelpflug would have to cross state lines from Wisconsin to the original delivery point in Iowa was irrelevant because the requirements for commercial drivers are different in Iowa than in Illinois. In Iowa, a “person working for a farmer” is exempt from commercial driver’s license requirements “while operating a commercial motor vehicle controlled by the farmer within 150 air miles of the farmer’s farm to transport the farmer’s own agricultural products.” Under Illinois law, the exemption applies “only when the driver is a farmer or member of the farmer’s family.” In this case, Stelpflug’s driver provided a statement demonstrating that he would be eligible to transport Stelpflug’s grain to Iowa but not to Illinois.
- Cargill attempted to have Stelpflug execute amendments to the contracts that designated the new delivery point over the course of multiple telephone conversations and in-person visits between the parties. Stelpflug consistently refused to sign the amended contracts and claimed that Cargill had breached the original contracts between the parties. Stelpflug argued that in order to mitigate damages, he contracted with another elevator to sell the corn in dispute. It is clear through statements from both parties that Stelpflug would not agree to any alteration of the original contracts without compensation for the increase in freight costs.
- Neither party followed best practices to resolve this dispute. Stelpflug was the party that set forth options to resolve the dispute in writing by letter on May 27, 2010. Although this letter lacks some formality, it clearly conveys Stelpflug’s position and the options he viewed as available under which the parties could proceed. Based upon the parties’ submissions in this case, Cargill did not respond to Stelpflug’s May 2010 letter. Cargill disregarded the letter and, instead, issued “confirmations of change” that were never “mutually” agreed to by Stelpflug. Because Stelpflug did not agree to the change of delivery points without compensation for increased freight costs, the “confirmations of change” were not valid. They did not bind Stelpflug.

- Cargill’s argument that Stelpflug was obligated pursuant to NGFA Grain Trade Rules 3 and 4 to the terms of the amendments because Stelpflug failed to respond to the confirmations of change issued by Cargill was without merit. Cargill claimed that NGFA Grain Trade Rule 3 required Stelpflug to respond to the confirmations of change. However, NGFA Grain Trade Rule 3 refers to the “Confirmation of Contracts” whereby the parties to a trade confirm in writing the specifications of their agreement. Rule 3 places a duty on the parties to an agreement to each issue their own confirmation or to notify each other regarding any disagreement in the confirmations received. NGFA Grain Trade Rule 4 [Alteration of Contract], however, was the provision that applied in this case. Rule 4 states as follows:

The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by written communication by both parties.

The evidence presented by both sides in this case was conclusive that Stelpflug never agreed to the changed terms proposed by Cargill.

- The events subsequent to July 8, 2010 were largely irrelevant, including the numerous notices by Cargill intended to change the contracts and secure Stelpflug’s agreement to the changes. Cargill then proceeded to follow through with canceling the contracts and invoicing Stelpflug for damages. This would have been the proper process for Cargill had Stelpflug defaulted on his original contracts. However, Stelpflug had raised a legitimate dispute once the delivery point was altered, which Cargill did not adequately address. Stelpflug also attempted to resolve the dispute in good faith.

- NGFA Grain Trade Rule 28(B) [Buyer’s Non-Performance] states as follows:

If the Buyer fails to notify the Seller of his inability to complete his contract ... the liability of the Buyer shall continue until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. In such case it shall then be the duty of the Seller after giving notice to the Buyer to complete the contract, at once elect to: ... (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

- The arbitrators’ primary obligation was to enforce the agreement between the parties. The arbitrators consequently concluded that Cargill defaulted on the terms of the original contracts by unilaterally changing the delivery point and refusing to recognize additional shipping costs for the buyer’s account. Whether Stelpflug strictly adhered to NGFA Grain Trade Rule 28(B) was inconsequential after Cargill defaulted on the contracts. As the defaulting party to the contracts, the arbitrators declined to award any damages to Cargill.

## THE AWARD

The arbitrators concluded that neither party was entitled to damages in this case.

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

**John Cranor, *Chair***  
Logistics Operations Manager  
Northwest Grain Growers Inc.  
Walla Walla, Washington

**Duane Disque**  
Grain Department Manager  
Morrow County Grain Growers Inc.  
Lexington, Oregon

**Kevin Hachler**  
Merchandiser  
London Agricultural Commodities Inc.  
London, Ontario