Arbitration Decision
National Grain and Feed Association

January 28, 1999

Arbitration Case Number 1787

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Mark Hoffman, aka Mark J. Hoffman, Carroll, Iowa

Statement of the Case

This case involved a dispute between Cargill Inc., the buyer, and Mark J. Hoffman, the seller[1] concerning 10 corn contracts executed between the two parties. Five of the contracts, totaling 350,000 bushels, were to be delivered to Cargill's Blair, Neb., plant between March 1, 1996 and July 31, 1996. In this decision, these contracts are referred to as old-crop contracts. The other five contracts were to be delivered to the Blair plant between Oct.1, 1996 and Feb. 29, 1997. These contracts are referred to as new-crop contracts.

Old Crop Contracts

Date	Contract Number	Bushels	Price ($/bu.)	Delivery Period
Sept. 11, 1995	10306	50,000	$2.87	March 1-31, 1996
Sept. 11, 1995	10307	100,000	2.94	July 1-31, 1996
Sept. 12, 1995	10320	100,000	3.00	July 1-15, 1996
Sept. 18, 1995	10388	50,000	3.00	Feb. 1-29, 1996
Feb. 29, 1996	12794	50,000	2.90	May 1-31, 1996

New-Crop Contracts

Date	Contract Number	Bushels	Price ($/bu.)	Delivery Period
Dec. 11, 1995	11592	20,000	$2.70	Dec. 1-31, 1996
Feb. 8, 1996	12406	30,000	2.84	Jan. 1-31, 1997
Feb. 16, 1996	12615	25,000	2.97	Feb. 1-29, 1997
Feb. 29, 1996	12795	30,000	3.00	Dec. 16-31,1996
March 12, 1996	12887	20,000	3.04	Oct.1-31, 1996

The Decision

Cargill contended that Hoffman delivered 27,928 bushels between March 1996 and April 12, 1996. Hoffman then complained that Cargill's weight scales were inaccurate and refused to make additional deliveries until the scales were fixed. In several letters exchanged between Cargill and Hoffman's attorney, Cargill requested that Hoffman use an independent scale adjacent to the Blair facility or deliver to the AGRI Grain Marketing elevator in Council Bluffs, Iowa. Cargill also offered a delivery time extension to facilitate Hoffman's performance. Hoffman refused all these offers, but did deliver two loads to the Blair facility on July 8, 1996.

In a letter dated July 25, 1996, Cargill notified Hoffman's attorney that it would accept new-crop corn deliveries in October and November against old-crop contracts, at a $1.34-per-bushel market difference. Cargill further said that if this proposal was unacceptable, it would cancel the five old-crop contracts and seek damages against Hoffman. Hoffman did not accept the offer.

On July 29, 1996, Cargill informed Hoffman that the contracts were canceled and claimed damages under NGFA Grain Trade Rule 10 as follows:

[1] *A two-day oral hearing on this case was conducted in Omaha, Neb., on July 28 and 29, 1998. While the contracts contained an arbitration provision and both parties signed the initial NGFA Contract for Arbitration, Hoffman subsequently attempted to revoke his agreement and filed a breach-of-contract lawsuit against Cargill in federal court. Subsequently, the court granted Cargill's motion to compel arbitration before the NGFA Arbitration System. [Mark Hoffman v. Cargill Inc., Case No. C 97-3015-MWB (N.D. Iowa, Central Div., July 2, 1997)].*

Contract Number	Bushels	Market Price ($/bu.)	Contract Price ($/bu.)	Difference ($/bu.)	Total ($)
10306	20,167.83	4.42	2.87	1.55	$31,260.14
12794	50,000	4.42	2.90	1.52	76,000.00
10388	50,000	4.42	3.07	1.35	67,500.00
10307	100,000	4.42	2.94	1.48	148,000.00
10320	100,000	4.42	3.00	1.42	142,000.00
			Total Claim:		$464,760.14

From Oct. 21-24, 1996, Hoffman delivered five loads of corn against new-crop contract number 12887. Cargill withheld payment on these loads, placing the funds in an escrow account, pending payment of its claim on the old-crop contracts. Hoffman informed Cargill he would not deliver any more corn to the Blair, Neb., facility. Therefore, Cargill, by letter dated Nov. 11, 1996, canceled the five new-crop contracts at the contract price.

The defendant argued that Cargill had breached the contracts by: 1) issuing weight certificates that falsely represented its weighers as being federally licensed; and 2) not providing accurate destination weights. The defendant further contended that Cargill violated NGFA Grain Trade Rule 41 by attempting to change the contract terms, and Grain Trade Rule 43 by canceling the new-crop contract. As a result, the defendant claimed he was entitled to delay performance on the new contracts.

Hoffman counterclaimed damages against Cargill as follows:

1. 1995 Load shortages:	235@$23.00	$ 5,405.00
2. 1996 Load shortages:	223@$23.00	5,129.00
3. Non-payment for October 1996 deliveries:		14,592.30
4. Storage on 320,167 bu for 18-24 months:		168,688.00
5. Attorney fees and costs:		60,000.00
6. Specific performance on all contracts (or damages for interest and market loss).		
7. New Crop contracts:		

Contract Number	Bushels	Contract Price ($/bu.)	Market Price Time of Cancellation ($/bu.)	Total ($)
11592	20,000	2.70	2.56	$ 2,800
12406	30,000	2.84	2.56	8,400
12615	25,000	2.97	2.56	10,250
12795	30,000	3.00	2.56	13,200
12887	20,000	3.04	2.56	9,800
			Total Claimed:	$44,450

Total counterclaim against Cargill: $298,264.30, plus interest.

In reaching their decision in this case, the arbitrators looked beyond the NGFA Trade Rules and focused upon the express contract terms and conditions. It is well recognized that the NGFA Trade Rules (as stated in the Preamble to the NGFA Grain Trade Rules) are applicable only "to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule." In this case, portions of the rules were altered by the parties' express contractual terms, which then took precedence over the NGFA Trade Rules.

Plaintiff's Claims. In this particular case, Cargill's contracts clearly stated, "Buyer may designate any reasonable alternative delivery points if necessary." Thus, Hoffman by entering into Cargill's contract, agreed to the possibility that an alternative delivery point to Cargill's facility at Blair could be required. Thus, Cargill did not violate NGFA Grain Trade Rule 21 (which addresses weights) nor NGFA Grain Trade Rule 41 (which pertains to alteration of a contract) by simply acting in accordance with the express contractual terms. Therefore, the arbitrators concluded that Cargill was within its rights, under the contract, to request delivery to other points and, when that request was refused by Hoffman, to cancel the contracts at fair market value.

Defendant's Counterclaims. The arbitrators made the following findings concerning the defendant's counterclaims:

- **Load Shortages:** The defendant provided evidence of handwritten changes to scale tickets made by Cargill personnel. But the arbitrators could not conclude from this evidence that the weights were correct or incorrect, but only that operator errors occurred in the weighing process. The State of Nebraska Department of Agriculture Division of Weights and Measures did conduct an inquiry at the request of the defendant. The inquiry determined that operator error to the printed scale ticket could occur, but, the scale itself was accurate. Since the Nebraska Department of Agriculture was the proper regulatory agency to certify the accuracy of Cargill's scales, the arbitrators could only conclude that no load shortages occurred based upon the evidence presented.

- **Nonpayment for October 1996 Deliveries:** Cargill was within its rights to offset payment on the October 1996 corn deliveries. Numbered item 15 under Cargill's contract conditions permitted Cargill to "set off any mutual debt and claims against seller under or in connection with this contract, as well as, any and all other commodity contracts and forward contracts between the parties." On this basis, the defendant's claim for non-payment for October deliveries was denied.

- **Storage of 320,167 Bushels:** The defendant was under no obligation to store corn for the plaintiff. No evidence was submitted to prove or disprove that corn actually was stored by the defendant. If Hoffman did in fact store corn, it was merely a unilateral decision on his part and not a matter addressed by the parties' contracts. The arbitrators denied the counterclaim for storage.

- **Cancellation of Contracts:** Based upon Hoffman's statement, "I would not be delivering any more corn to the Blair facility until the scales are fixed," and the fact the scales at the time were certified and legal for commerce, Cargill made a reasonable determination that the defendant had defaulted on the new-crop contracts. However, the arbitrators concluded that Cargill erred in canceling those contracts at contract price rather than at fair-market value.

- **Legal Expenses:** The defendant failed to provide a compelling argument for the requested award of legal expenses, and failed to provide an itemized list of legal expenses for the arbitrators to consider. Therefore, the claim was denied.

The Award

The arbitrators unanimously concluded that Cargill should be awarded its claim of $464,760.14. This award is to be offset by the $14,781.57 held in escrow by Cargill (to which Cargill is entitled). Further, Hoffman is awarded $41,716.07 on his counterclaim related to Cargill's miscalculation of damages when canceling the contracts. The arbitrators also concluded that Cargill should be awarded compound interest at the rate of 9.25 percent per annum[2] from Oct. 29, 1996 (the date of Cargill's original arbitration complaint) on the net award of $408,262.50.

Oral Hearing Expenses: The party requesting an oral hearing is required to pay the expenses of the oral hearing pursuant to Section 8(g) through (i) of the NGFA Arbitration Rules. Defendant Hoffman requested an oral hearing in this case and deposited with the NGFA the sum of $7,500 as an advance against the expenses. The actual expenses[3] totaled $6,753.17. Therefore, Hoffman is entitled to a refund of $746.83, which shall be paid to him by the NGFA.

All of the claims and arguments of the parties were thoroughly reviewed and considered by the arbitrators, even if not addressed expressly in this written decision. Thus, this decision is intended to resolve all issues between the parties on the transactions at issue in this case.

Therefore, it is ordered that:

Cargill Inc. is granted a net judgment against Mark Hoffman in the amount of $408,262.50, plus compound interest at the rate of 9.25 percent per annum from Oct. 29, 1996 until all amounts are paid in full.

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

Vince Goecke, Chairman
Vice President
Columbia Grain International, Inc.
Great Falls, Mont.

Jay Mathews
Grain Manager
Effingham Equity
Effingham, Ill.

Richard West
Chief Executive Officer
Prairie Central Co-op Inc.
Chenoa, Ill.

[2] *The "bank prime loan rate" of 8.25 percent reported by the Federal Reserve Board of Governors for October 1996, plus 1 percent.*

[3] *Includes airfare, hotel, meals and related expenses for the arbitrators, national secretary and NGFA's outside legal counsel.*