



National Grain and Feed Association Arbitration Decision

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November 16, 2000

Arbitration Case Number 1974

Plaintiff: Vita Plus Corp., Gagetown, Mich.

Defendant: Parrish & Heimbecker Inc., Brown City, Mich.

Statement of the Case

This dispute involved a complaint filed by Vita Plus Corp. (Vita Plus), the plaintiff, against Parrish & Heimbecker (P&H), the defendant, in connection with P&H's alleged failure to make full payment for 839 bushels of soft white wheat.

Vita Plus claimed damages as follows:

Wheat Value (839 bushels x \$2.90 per bushel, less discounts)	\$2,401.44
Collection and Mileage Expenses	1,532.00
Arbitration Expenses	300.00
Total Damages	\$4,233.44

P&H argued that Vita Plus defaulted on its contractual obligations because the wheat initially was undeliverable because it contained excessive levels of phosphine.

Vita Plus sold one load of soft white wheat to P&H on Nov. 9, 1998. Delivery by truck was attempted in St. Ansgar, Iowa, on Nov. 10. However, the load was rejected because the destination elevator found an excessive level of phosphine gas in the wheat. P&H informed Vita Plus that it could not unload the wheat because of high levels of phosphine gas. Vita Plus told P&H that this was the first load out of a bin fumigated from Aug. 25, 1998 to Sept. 28, 1998 by a professional fumigation company. On Sept. 28, 1998, an air sample taken in the head space did not detect any phosphine gas. The bin subsequently had been aerated for three weeks.

Based upon its relationship with the destination elevator, P&H informed Vita Plus that it was certain that the destination elevator would unload the truck if it received the fumigation times. P&H requested, by faxes to Vita Plus on Nov. 10 and

11, a fumigation report. Vita Plus then contacted the fumigation service company to request a report be sent directly to P&H, which was eventually received by P&H.

There was no further communication between Vita Plus and P&H until Jan. 15, 1999, when P&H presented to Vita Plus a check in the amount of \$110.06 for final payment for the wheat. P&H calculated that amount as follows:

Value of Wheat (839 bushels x \$2.90 per bushel)	\$2,433.10
Less Collection and Mileage Expenses	2,067.15
Less Arbitration Expenses	255.89
Net Amount Due	\$ 110.06

P&H explained that delivery was attempted at the original destination each week after Nov. 10 until Dec. 21, 1998. On Dec. 28, 1998, after a phosphine gas reading of 0.5 parts per million was taken, P&H sold the load of wheat to another buyer, Ralston Purina Co., in Clinton, Iowa, 200 miles from the original destination. The load was accepted by Ralston Purina.

The Decision

The arbitrators determined that no information was presented that would establish that Vita Plus was notified by P&H that the load of wheat was rejected. This specifically is required for rail shipments under NGFA Grain Trade Rules 16 and 17, and is the practice of the trade for other shipments. The arbitrators also found that P&H acted arbitrarily in the disposition of the wheat in a manner that resulted in failure to mitigate the loss to Vita Plus.

The Award

It therefore is ordered as follows: Vita Plus is granted a judgment in the amount of \$2,401.44 against P&H.

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

John C. Anderson, *Chairman*
General Manager/Chief Executive Officer
Central Washington Grain Growers Inc.
Waterville, Wash.

James E. Maness
Assistant Vice President
Bunge Corp.
St. Louis, Mo

Bill Wallbrown
President
Deerfield Farms Service Inc.
Deerfield, Ohio