National Grain and Feed Association
Arbitration Decision
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April 14, 2005

Arbitration Case Number 2077

Plaintiff: **High Country Mercantile Inc., Cody, Wyo.**

Defendant: **Laughlin Cartrell Inc., Carlton, Ore.; and Wildlife Marketing Service Inc. d/b/a Wildlife Sciences, Chaska, Minn.**

Statement of the Case

High Country Mercantile Inc. ("High Country") initiated this arbitration case to resolve a dispute concerning two rail carloads of U.S. No. 2 feed barley that involved Wildlife Marketing Service Inc. d/b/a Wildlife Sciences ("Wildlife") and Laughlin Cartrell Inc. ("Laughlin").

Wildlife purchased the two carloads of barley from High Country (Wildlife purchase contract numbers 35303 and 35304). High Country, in turn, purchased the two carloads from Laughlin (High Country purchase contract numbers 1428 and 1429/ Laughlin sale contract numbers S-32101 and 32107). Laughlin's contract with High Country provided for first official weights and grades. High Country essentially served as a "middleman" in this transaction.

Upon arrival at Commerce City, Colo., the barley was accepted and fully unloaded from one of the two rail cars (BN 448502). However, the second car (BN 472493) was only partially unloaded; the remainder of its contents was rejected, allegedly "due to sour odor and a poor sound count." The Kansas Grain Inspection Service obtained and tested samples from both cars at destination, which showed that the sample from BN 448502 met the grade for U.S. No. 2 feed barley. But the sample from BN 472493 did not meet that grade. Discrepancies between origin and destination weights for both cars also were detected, but apparently were not disputed as part of this case.

High Country argued that it had paid Laughlin properly for the quantity of product actually received at the contracted price. Concerning the rejected portion, High Country contended that it was properly rejected with appropriate notice to Laughlin. High Country asserted that Laughlin was pursuing full payment for the rejected car because Laughlin already had paid its supplier in full. High Country also stated that Laughlin's supplier had recovered on a claim with the rail carrier related to the rejected car.

Laughlin stated that the sale of the barley to High Country was f.o.b. origin, and was to be based upon origin weights and grades supplied to the buyer at the time of the agreement. Laughlin argued that all of High Country's alleged damages and claims occurred after title of the product had transferred, and Laughlin no longer had control over the security or quality of the product after title transferred. Laughlin alleged that the physical characteristics of the product changed while in transit.

Wildlife countered that it had properly paid for the product it received, as well as for the associated freight costs. Wildlife argued that the significant discrepancies between origin and destination weights indicated a mismatch of the submitted samples between the rail cars at issue and other cars at origin, which it asserted better explained the grade discrepancies than the argument that the product had changed while in transit.

The Decision

The arbitrators decided that NGFA Feed Trade Rule 18 [Condition Guaranteed Upon Arrival] applied to this case. NGFA Feed Trade Rule 18(A) states as follows:

"Shipment on contracts shall be guaranteed by the Seller to arrive at final destination, cool, sound and sweet, and free of objectionable extraneous

material, with the following exception: When shipments are ordered to a reconsignment point, the Seller shall not be responsible for condition at final destination unless shipments are ordered forward from such reconsignment points within 48 hours after arrival, and in no case shall the Seller be responsible for condition at final destination if a second reconsignment or diversion is made."

The arbitrators decided that also applicable to this case was NGFA Feed Trade Rule 16(B), which states:

"If the Buyer, by exercise of due diligence verifies that the shipment does not comply with contract terms, he shall notify the Seller by telephone, facsimile or wire not later than 12 noon Central Time the next business day. After serving such notice the Buyer shall, within one (1) business day thereafter, advise the Seller by telephone, facsimile or wire, which of the following options he elects to exercise:

(1) Reject the shipment and (a) cancel the rejected portion of the contract at fair market value of the contracted feedstuff as of the date of the rejection or (b) schedule a replacement shipment;

(2) Accept the shipment under mutually acceptable conditions."

The arbitrators determined that the product at issue in this case did not arrive at final destination in a *"cool, sound and sweet, and free of objectionable material"* condition in accordance with NGFA Feed Trade Rule 18(A). The arbitrators further decided that the product did not meet the grade specifications for U.S. No. 2 feed barley, as required under the contract between High Country and Laughlin, and that the product was properly rejected under NGFA Feed Trade Rule 16(B). Therefore, the arbitrators concluded that neither Wildlife nor High Country was obligated to pay for the rejected portion of the second car of barley or for the associated freight costs.

The arbitrators decided that any loss to Laughlin was the result of Laughlin's acceptance of the weights and grades of its supplier's elevator at Milton, N.D. The arbitrators determined that the grades and weights provided at origin were based upon submitted samples, and therefore were not official grades. When the one car of barley did not make grade at destination, the arbitrators found that Laughlin had accepted the responsibility according to the terms of its own purchase contract. The arbitrators concluded that Laughlin was not entitled to full payment for the rejected car because it did not meet qualifications under the terms of its contract with High County and in accordance with NGFA Feed Trade Rule 18. Laughlin agreed to purchase these cars from its supplier based upon submitted weights and grades. But Laughlin's contract with High Country provided for first official weights and grades, which the arbitrators determined to be the destination weights and grades because those rendered at origin were not official.

In considering damages, the arbitrators observed that the parties in their submitted arguments and documentation failed in certain respects to adequately express or quantify the claims in dollar amounts. It appeared from the documentation provided to the arbitrators that Laughlin sought $5,176.05 as a past due amount from High Country. The arbitrators surmised that this amount represented the entire sum in dispute between the parties, including Laughlin's claim for the full contents of the rejected car at the contract price. The arbitrators could not determine conclusively how much of that sum referred to the product that was unloaded from the rejected car, or even whether that was a matter of dispute between the parties.

The arbitrators determined that Laughlin was not entitled to payment for the rejected carload. However, with respect to the portion of the product that was unloaded from the rejected car, the arbitrators concluded that even if Wildlife and High Country were not required to pay the contract price, Laughlin at least should have been entitled to a discounted value payment (i.e., for sample grade). To recover for the rejected carload, Laughlin may have had recourse through its supplier. But Laughlin was not entitled to recover through High Country or Wildlife.

The Award

The arbitrators consequently ordered that neither High Country nor Wildlife were obligated to pay for the rejected product in the second rail car.

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

Clyde Krebs, *Chair*
President
Circle K Feed and Grain Inc.
Glen Ullin, N.D.

Phil Lindau Jr.
Executive Vice President
Commodity Specialists Co.
Minneapolis, Minn.

Bruce Sutherland
Vice President
Michigan Agricultural Commodities
Lansing, Mich.