



National Grain and Feed Association

Arbitration Decision

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March 15, 2007

Arbitration Case Number 2135

Plaintiff: ConAgra Foods Inc. d/b/a Peavey Co., Waunakee, Wis.

Defendant: Tom Klahn d/b/a Klahn Farms, Lodi, Wis.

Statement of the Case

This case involved an action filed by ConAgra Foods Inc. d/b/a Peavey Co. ("ConAgra") against Tom Klahn d/b/a Klahn Farms ("Klahn") for damages allegedly resulting from the delivery of contaminated corn to ConAgra's facility in Arlington, Wis., in October 2004.

ConAgra claimed the delivered corn contained seed corn treated with the pesticide, *CAPTAN*, which ultimately was mixed with other corn at the Arlington facility. According to ConAgra, the incident also required that it temporarily shut down the facility, and segregate all potentially contaminated corn and sell it at steep discounts.

ConAgra requested total damages of \$157,551.72, including \$9,298.33 in transportation costs; \$41,747.50 for loss on the sale of the contaminated grain; and \$106,505.89 for business inter-

ruption resulting from the closing of the Arlington facility. ConAgra also requested reimbursement of attorney's fees.

Meanwhile, Klahn claimed, among other things, that ConAgra failed to follow proper grain sampling and handling procedures, including the official policies and procedures for sampling grain under the U.S. Grain Standards Act. Klahn also disputed that it was the source of the allegedly contaminated corn or the cause of ConAgra's consequential damages. Klahn further disputed ConAgra's claims for business interruption and lost profits as speculative and unforeseeable. ConAgra replied that because the Arlington facility is a country elevator, it was not required to utilize official sampling or grading procedures from the U.S. Department of Agriculture's Federal Grain Inspection Service (FGIS).

The Decision

The arbitrators determined the following:

- ▶ There was a valid contract between ConAgra and Klahn Farms.
- ▶ Based upon the extensive evidence and documentation submitted by the parties, including Klahn's own acknowledgments, it was Klahn's load that was contaminated with the treated kernels.
- ▶ Sampling procedures need not be in accordance with official standards at the country elevator level.
- ▶ Even though contaminated seed was not found in the sample obtained by ConAgra itself during the actual unloading, based upon ample other evidence, it was determined that Klahn was the source of the contami-

nated corn at the Arlington facility, and Klahn remained liable.

The arbitrators awarded \$35,773.13 to ConAgra, based upon the following:

- ▶ 21,880 bushels of corn was sold for salvage at an actual loss of \$1.21 per bushel (\$26,474.80).
- ▶ ConAgra had a small profit on the sale of the remaining approximately 50,000 bushels (\$1.87 per bushel versus \$1.77 per bushel).
- ▶ ConAgra's claim for loss on the 71,880 bushels of corn included carry charges into the following summer of \$0.2950-per bushel. The arbitrators denied this claim, as they determined that it was unclear whether

ConAgra had actual ownership of the corn at the time or could have earned the carrying charge by holding the corn into the next year.

▶ ConAgra claimed a loss for business interruption in the amount of \$106,505.89 during closure of its Arlington facility (which included carrying charges into July of the following year that were denied as noted previously). The arbitrators also denied ConAgra's claim for business interruption losses after determining that ConAgra's arguments were not sufficiently convincing. The arbitra-

tors concluded that they could not adequately determine the extent of the loss, if any, resulting from the shutdown of the Arlington facility. The arbitrators noted that ConAgra hauled and diverted corn to its other facilities during the period that the Arlington facility was closed.

▶ The arbitrators concurred that ConAgra should be reimbursed for freight paid on the corn hauled and diverted to ConAgra's other facilities while the Arlington facility was closed (\$9,298.33).

The Award

Based upon all the information provided in this case, the arbitrators awarded the amount of \$35,773.13 to ConAgra. The arbitrators further determined that each party was at fault in prolonging this case and should be liable for its own attorney's fees. The arbitrators further decided that no interest be awarded.

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

Paul Coppin, *Chair*
General Manager
Reynolds United Cooperative
Reynolds, N.D.

Marc W. Larson
Corporate Counsel
Tate and Lyle Ingredients Americas Inc.
Decatur, Ill.

Scott Stabbe
Grain Division Manager
Heart of Iowa Cooperative
Nevada, Iowa