



# National Grain and Feed Association Arbitration Decision

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January 9, 2014

## CASE NUMBER 2607

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

**Defendant:** Jacob Kuker, Arcadia, Iowa

### STATEMENT OF THE CASE

This dispute involved 11 contracts between the buyer, Cargill, Incorporated (Cargill), and the seller, Jacob Kuker (Kuker), for the delivery of 155,000 bushels of U.S. No. 2 yellow corn to Cargill's facility in Blair, Neb. The contracts were dated between August 2009 and May 2010. Each contract was signed by both Kuker and Cargill. The contracts provided for delivery of the corn at various times between December 2010 and December 2011. The 11 contracts at issue in this case were identified as contracts numbered 80201, 80253, 80288, 80851, 80862, 81185, 81427, 82333, 83279, 83280 and 86205.

Cargill argued it made numerous attempts to communicate with Kuker after he failed to deliver corn under the contracts. Cargill claimed it attempted to communicate with Kuker by telephone on various occasions and by certified mail in June 2011, but that Kuker failed to respond to Cargill's telephone calls and correspondence. Cargill also claimed the parties met in person twice in June and July 2011, at which time Cargill stated that Kuker represented that he acknowledged his obligations and would be performing under the contracts. After additional unsuccessful attempts to communicate with Kuker, Cargill cancelled nine of the contracts by letters dated Aug. 8 and Aug. 12, 2011. On Aug. 24 and Aug. 30, 2011, Cargill wrote to Kuker requesting adequate assurance of performance for the other two contracts. Cargill stated that Kuker failed to comply with these requests and Cargill cancelled those contracts by letter dated Oct. 24, 2011. Cargill argued that its total damages for cancellation of the 11 contracts were \$386,953.31.

In its response to Cargill's claims, Kuker acknowledged that he had entered into the 11 contracts in dispute. Kuker further stated that he delivered 328,000 bushels of 2010 crop corn to Cargill between September 2010 and March 2011. Kuker argued that Cargill had failed to take into account these delivered bushels in its claims in this case. In its rebuttal, Cargill stated it agreed that Kuker delivered 328,000 bushels of corn, but that those bushels were applied to contracts that were not at issue in this arbitration case.

Kuker further submitted that he had completed delivery under two of the eleven contracts in this dispute – contract number 80288 for 35,000 bushels of corn and contract number 82333 for 20,000 bushels of corn. Those two contracts apparently each included a "Premium Offer Addendum," which provided for a "binding conditional obligation" between the parties for a second delivery of the same quantity of bushels that would be triggered by future market price conditions. Kuker argued that to the extent Cargill's claims under those contracts were that Kuker was obligated to deliver additional grain based upon the addendums, then he had not been properly informed of those conditional obligations by Cargill. Kuker also argued that Cargill in this arbitration case had failed to properly plead or present proof that the conditions had been satisfied that would trigger the obligations to deliver additional bushels under those addendums.

## THE DECISION

The evidence presented in this case established that there was no dispute for nine of the contracts – those contracts numbered 80201, 80253, 80851, 80862, 81185, 81427, 83279, 83280 and 86205. The parties signed and entered into these contracts willingly. Cargill and Kuker both acknowledged these contracts in their submissions in this case. Neither party disputed the terms of these contracts. The arbitrators further determined that the evidence presented in this case established that Kuker failed to fulfill these nine contracts. The parties agreed the total corn delivered to Cargill was 328,000 bushels. The evidence demonstrated that those 328,000 bushels were applied against other contracts between the parties.

With respect to contracts 80288 and 82333, the evidence produced by Cargill indicated that some of the corn delivered by Kuker was applied to those contracts. Cargill applied 35,000 bushels of Kuker's corn to contract 80288 and 20,000 bushels to contract 82333. In its submissions in this case, Cargill did not address the exact nature of its remaining claims against Kuker under those contracts. Because Kuker had apparently delivered the initial quantities due under those contracts, the arbitrators inferred that Cargill's claim was that the "Premium Offer Addendum" in each of those contracts constituted an obligation on Kuker's part to deliver an additional 35,000 bushels and 20,000 bushels, respectively.

Neither party disputed the terms of these addendums. However, the arbitrators determined that no evidence was provided in this case to indicate that the conditions needed to trigger the sale of the additional corn under the addendums were satisfied. The arbitrators consequently declined to award damages based upon conditional requirements of additional shipments of corn under the addendums to contracts 80288 and 82333.

With respect to damages for the other nine contracts, the arbitrators determined that Kuker failed to give notice to Cargill of his inability or unwillingness to perform under these contracts. Indeed, the evidence indicated that in response to Cargill's attempts to communicate with him concerning the contracts, Kuker disregarded Cargill's communications or misinformed Cargill that he would be delivering corn to satisfy those contracts. The arbitrators consequently determined that Kuker's liability continued for these contracts until Cargill was able to determine that Kuker had defaulted. The arbitrators concluded that Cargill followed cancellation procedures in accordance with NGFA Grain Trade Rule 28 (A) and that Cargill was entitled to compensation for damages from Kuker. The arbitrators noted that only Cargill submitted evidence with respect to the damages incurred as a result of Kuker's default of the contracts. Therefore, the arbitrators awarded damages based upon the calculations presented by Cargill with the exclusion of \$95,023.07 in claimed damages under contracts 80288 and 82333.

## THE AWARD

The arbitrators awarded \$291,930.24 in damages to Cargill from Kuker. Interest shall accrue on the award at the rate of 3.25 percent per annum pursuant to NGFA Arbitration Rule 8(m) from the date of this decision until the award is paid in full.

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