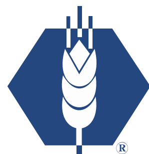

National Grain and Feed Association
Arbitration Decision

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December 13, 2013

CASE NUMBER 2650

Plaintiff: Clarkson Grain Company Inc., Cerro Gordo, Ill.

Defendant: Lackawanna Products Corporation, Clarence, N.Y.

STATEMENT OF THE CASE

This case involved an Aug. 30, 2012 contract for the sale of 1,800 bushels of organic corn screenings from Clarkson Grain Company Inc. (Clarkson) to Lackawanna Products Corporation (Lackawanna) at the price of $14.50-per-bushel (contract number S-23308).

The contract provided for a shipment period of Aug. 30-31, 2012. The contract also included the following terms:

Delivery Location:	FOB CERRO GORDO
Weights:	DESTINATION
Grades:	DESTINATION
Scale of Discounts:	POSTED SCALE
Trade Rules:	NGFA
Shipping Method:	TRUCK
Movement Type:	CUSTOMER TRUCK

The parties did not dispute the validity or the terms of the contract.

The contracted quantity of screenings was shipped as two truckloads. The first was loaded on Aug. 31, 2012; the second was loaded on Sept. 4, 2012. Both loads were delivered to Lackawanna's customer on Sept. 5, 2012.

According to Clarkson, the first truckload of screenings picked up on Aug. 31 was damaged in transit while the truck remained outdoors over five nights of heavy rainfall. After the Aug. 31 load was rejected at destination, Clarkson claimed it attempted to assist Lackawanna in identifying alternative buyers that would accept it. After various unsuccessful attempts to deliver the load to a buyer that would accept it, Lackawanna ultimately secured a buyer for the load in Iowa at significantly discounted prices based upon the quality of the load.

Clarkson claimed that Lackawanna owed the contract price for the Aug. 31 load because, according to Clarkson, the load was in good and merchantable condition and quality when it was picked up at Clarkson's facility. Clarkson argued that Lackawanna assumed responsibility and ownership for the truckload on the FOB contract when it left the origin. Clarkson claimed its total damages under the contract were $12,801.47.

According to Lackawanna, both of the truckloads presented quality issues and were not in compliance with the requirements of the contract between the parties. Lackawanna disputed Clarkson's claim that the issues with the Aug. 31 truckload were weather-related. Lackawanna stated that its customer inspected the truck and found it to be in sound condition with no leaks or compromises that would have led to the water damage in transit. Lackawanna also argued that the damage and mold in the Aug. 31 truckload was too extensive to have occurred solely over the five-day period between loading and delivery. Lackawanna further argued that Clarkson assumed responsibility for that truckload by "directing" the truck to the alternative destinations after it was rejected by Lakawanna's customer.

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With respect to the second truckload picked up on Sept. 4, Clarkson noted that it was accepted at destination. However, Lackawanna stated that the quality of that load had also been an issue between the parties. Discounts were applied to that truckload because of insect infestation. Clarkson countered that detecting insects in such a load in August would not be surprising, and because the parties had resolved the matter and agreed to the discounts, the second truckload should not be considered in this dispute.

THE DECISION

The arbitrators determined that a valid contract existed between the parties. The parties failed to raise any objections to the terms of the contract and the parties acted upon and attempted to perform under the contract.

The arbitrators noted that NGFA Grain Trade Rule 6 [Passing of Title as Well as Risk of Loss and/or Damage] applies to f.o.b. contracts. NGFA Grain Trade Rule 6(A) states as follows:

> Title, as well as risk of loss and/or damage, passes to the Buyer as follows:
>
> (A) On f.o.b. origin or f.o.b. basing point contracts, at the time and place of shipment. The time of shipment is the moment that the carrier accepts the appropriate shipping document.
> ...

However, the arbitrators determined that the terms of the contract in this dispute, which provided for destination grades and scale discounts, superseded application of Rule 6(A) in these circumstances. As set forth in the preamble to the NGFA Grain Trade Rules, the Trade Rules "apply only to the extent that the parties to a contract have not altered the terms of the rules."

The arbitrators noted that the parties in their submissions in this case failed to provide documentation establishing what the scale of discounts would be under this contract. The arbitrators determined that customary trade practice, destination grades and posted scale discounts all should apply to this contract. The arbitrators also concluded that customary trade practice determined that a company could reject a load if the product did not meet the contract specifications or if a discount could not be agreed on.

The arbitrators did not consider the quality of the second load of screenings for purposes of judging the quality of the first truck load. However, the arbitrators noted that the fact that the parties agreed to a discount for the second load based upon quality factors supported their decision to apply trade practice, destination grades and posted scale discounts for the first truckload.

The arbitrators also noted that the parties' submissions referred to extensive freight costs incurred while the rejected load was being trucked to the different alternative locations. The arbitrators concluded from what was ascertainable in the parties' submissions that the freight company had retained the proceeds from the final sale of the load as compensation for freight costs. The arbitrators decided that to the extent either party had claims for the freight costs those claims would be between the respective party and the freight company, which is not a party to this arbitration, and consequently outside of this case.

From the parties' submissions, the arbitrators were also able to determine that a quantity of 2,100 lbs/37.5 bushels of screenings were unloaded from the rejected truckload and accepted at the different locations where Lackawanna had attempted to unload the truck before it found the buyer to accept the full truckload. Based upon the contract price of $14.50-per bushel, the arbitrators determined that $543.75 was due to Clarkson from Lackawanna for those partial unloads.

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THE AWARD

The arbitrators ordered that Clarkson be awarded $543.75 from Lackawanna. All other claims by either party were denied.

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

William Doyscher, *Chair*
Assistant Manager
Farmers Cooperative Elevator Co.
Hanley Falls, MN

Tom Hauschel
CEO and General Manager
Heartland Co-op
West Des Moines, IA

John Skelley
President
West Plains, LLC
Kansas City, MO

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