National Grain and Feed Association
Arbitration Decision
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July 16, 2024

CASE NUMBER 2951

PLAINTIFF: **PARRISH & HEIMBECKER LTD.**
WINNIPEG, MANITOBA, CANADA

DEFENDANT: **GRANT JEWELL**
KENASTON, SASKATCHEWAN, CANADA

STATEMENT OF THE CASE

This case involves the following contracts between the plaintiff, Parrish & Heimbecker, Ltd. (P&H), and the defendant, Grant Jewell (Jewell):

Contract 308949

- #1 Canadian Western Barley
- 250 Metric Ton (MT) purchase contract
- Contract date January 8, 2021
- Confirmed electronically January 9, 2021
- $229.65 / MT
- Delivery to Parrish Siding, SK
- November 2021 delivery

Contract 310244

- #1 Canadian Western Barley
- 50 MT purchase contract
- Contract date January 13, 2021
- Confirmed electronically January 21, 2021
- $238.84 / MT
- Delivery to Parrish Siding, SK
- November 2021 delivery

Contract 315818

- #1 Canadian Canola
- 100 MT purchase contract
- Contract date February 4, 2021
- Confirmed electronically February 5, 2021
- 551.15 / MT

- Delivery to Parrish Siding, SK
- October 2021 delivery

The sequence of events leading up to this dispute were as follows:

- Jewell and P&H contracted grain for fall delivery in January/February 2021. Jewell confirmed all three contacts electronically.
- No communication occurred between the parties February through July 2021.
- On August 18, 2021, P&H asked Jewell if he would want to deliver his barley contracts early as there was a drought in the area causing an earlier need for grain.
- On August 27, 2021, Jewell responded with concern about being oversold on grain with P&H and other grain companies after realizing his yields.
- On September 3, 2021, a conversation occurred between P&H and Jewell about another canola contract (not in this dispute) in which Jewell did deliver against. Jewell was paid for that contract on September 28.
- On October 19, 2021, P&H verbally and in writing requested delivery of the canola contract in this dispute by October 29, 2021. No delivery was made by this date.
- The canola contract in dispute was deemed in default on November 2, 2021.
- Replacement canola was purchased for January delivery on November 2 with adjusted freight spreads for Parrish Siding.
- On October 21, 2021, P&H provided notice on the two barley contracts totaling 300 MT and declared Jewell in default if he did not deliver by November 10, 2021.
- P&H declared Jewell in default on November 12, 2021.
- On November 15, 2021, P&H sent a letter declaring the default on the two barley contracts. Enclosed with the letter were copies of the cancellation invoices along with a copy of a barley contract with a different seller priced at $390.41 per MT delivered to Weyburn, Saskatchewan, which P&H used as replacement values in calculating damages in this dispute.

Main arguments asserted by P&H are as follows:

- Jewell is in breach of Item #7 on the contract, which states if the seller finds themselves unable to deliver upon said contract they must notify the buyer immediately. Jewell did not notify P&H of this inability to deliver on the grain contract.
- Jewell did not deliver on the October canola contract #315818, and P&H did not receive indications that Jewell would deliver on the November barley contracts (#308949 and #310244).
- Since Jewell was in default on the October canola contract, on October 21, 2021, P&H requested delivery on the two barley contracts by November 10, stating that Jewell needed to deliver the barley contracts by this date or be deemed in default. Jewell did not deliver upon these contracts by November 10, 2021.

- On November 15, 2021, P&H provided a notice of default and invoices for the difference in contract prices and the cancelation market price of Nov 15, 2021.
- An administration fee of $10 per ton was assessed by P&H.

Main arguments asserted by Jewell are as follows:

- P&H failed to mitigate its damages on the contract defaults.
- Damages should be $22,952; not the $99,802.42 claimed by P&H.
- Upon becoming aware that there would be shortfall in the 2021 contracts, Jewell proactively reached out to P&H to advise of same and attempt to buy out of the forward grain contracts.
  - In April 2021, Jewell contacted P&H on other issues and offered to buy out of the contract. Jewell spoke with an employee of P&H and told him Jewell would be buying out of his contracts effectively immediately at current market prices.
  - In July 2021, Jewell followed up with P&H when its representatives were on his farm to discuss the crop conditions. Jewell reminded the P&H representative that the contracts were cancelled per Jewell's discussion with P&H in April. P&H's employee in July 2021 indicated he was unaware of the prior communications in April.
  - In September 2021, Jewell again followed up with P&H to buy out of the forward grain contracts.
  - Jewell provided grower bids for market prices in May, July and September from a third party's grain location.

THE DECISION

The arbitration committee unanimously finds as follows:

4. Our decision is to use the cancellation price to assess damages for the October canola contract #315818. With the original contract price at $551.15 / MT and the cancellation price at $983.25, plus the $10 administrative fee, was a difference of $44.21 / MT and an award of $44,210.10 CAD.
   a. On the two November barley contracts (#310244 and #308949), the arbitrators find the contracts were put in default before the full delivery period had expired, as they were full November delivery contracts and were deemed in default on November 10, 2021. The arbitrators also conclude Jewell had ample time to come up with an amicable solution for delivery of the barley under contract prior to November 10.
   b. In consideration of all the facts presented, the arbitrators find both parties are at fault in their failure to execute on these two barley contracts. Thus, the arbitrators have decided to halve the damages claimed by P&H and preclude the $10/MT administrative fee associated with this 300 MT of barley. The arbitrators agreed to use the market price provided by P&H as of November 15, 2021, as there was not a notable difference in the market price for barley on December 1, 2021 (when the contracts should have been cancelled).

c. For contract #310244, contract price was $238.84 and market cancellation price was $390.41. The difference would be $151.57 ÷ 2 = $75.79 x 50 MT for a total $3,789.25 CAD due to P&H.

d. For contract #308949, contract price was $229.65 and cancellation price was $390.41. The difference would be $161.41 ÷ 2 = $80.71 x 250 MT for a total $20,177.50 CAD due to P&H.

THE AWARD

The arbitrators awarded 68,176.85 CAD in damages to Parrish and Heimbecker, Ltd. from Grant Jewell. Interest shall accrue on the award at the rate of 3.25 percent pursuant to NGFA Arbitration Rule 6(F), to begin 30 days after this decision on the remaining dollars not paid by Jewell.

Decided: June 11, 2024

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Ryan Caffrey, *Chair*
VP, Trade & Risk
CHS Inc.
Inver Grove Heights, MN

Brett Calvert
Grain Solutions Manager
Sunrise Cooperative
Fremont, OH

Tim Newman
Grain Division Manager
Dakota Midland Grain
Norwich, ND