National Grain and Feed Association
Arbitration Decision
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July 26, 2024

CASE NUMBER 2980

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

DEFENDANT: **KEATON DONAHUE**
BIGGAR, SASKATOON, CANADA

STATEMENT OF THE CASE

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

Contract 311438

- 201.12 Metric Tons (MT) #2 Canada Yellow Peas
- $330.70 CAD/MT
- August 2021 delivery to Hanover Junction, SK
- Contract date January 18, 2021; confirmed by Donahue January 19, 2021
- 50.217 MT delivered; 150.903 MT in default

Contract 320213

- 226.8 MT #1 Canada Canola
- $617.29 CAD/MT
- September 2021 delivery to Hanover Junction, SK
- Contract date March 8, 2021; confirmed by Donahue March 8, 2021
- 3.193 MT delivered; 223.607 MT in default

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

Contract 311438

- January 18, 2021: Contract created by P&H.
- January 19, 2021: Contract electronically confirmed by Donahue.
- August 25 and September 3, 2021: P&H communicated to Donahue via text message about contract delivery as Donahue was outside of the contract delivery window. Donahue did not respond to either set of communications.
- On or about September 1, 2021: P&H extended the delivery window 90 days pursuant to the terms provided in the contract.
- September 7, 2021: P&H reached out again via text message about the lack of delivery under the contract. Donahue responded disclosing he was oversold due to production

loss, and he asked for a buy back value on the contract. P&H replied indicating replacement value would be roughly $14/bushel subject to market changes, so Donahue would owe $5/bushel or $183.73/MT. Donahue rejected that offer.

- September 22, 2021: When contacted again about the lack of delivery under the contract, Donahue claimed he was not done harvesting his peas.
- October 25, 2021: P&H again contacted Donahue about lack of delivery under the contract; Donahue did not respond.
- October 27, 2021: P&H again contacted Donahue about lack of delivery under the contract. Donahue confirmed he had hauled most of his pea bushels to a competitor of P&H and was short production. P&H stated the replacement value would now be $15.50/bushel. Donahue declined that offer.
- November 15, 2021: Donahue delivered 50.217 MT against the peas contract with P&H.
- November 17, 2021: Donahue confirmed he had no peas remaining.
- November 18, 2021: P&H placed the contract in default and determined a replacement value of $293.95/MT x 150.903 MT resulting in $44,357.64, plus 1,509.03 in administration fees for a total of $45,866.67 owed to P&H for this contract. Donahue refused to acknowledge or pay these charges.

Contract 320213

- March 8, 2021: Contract created by P&H and electronically confirmed by Donahue.
- September 22, 2021: P&H contacted Donahue about canola delivery as his contract was about due; no response back from Donahue.
- September 24, 2021: P&H contacted Donahue about delivering five loads against his contract the following week; Donahue acknowledged he "should be able to."
- September 28 and September 29, 2021: Donahue hauled in and applied 3.193 MT to contract 320231.
- October 1, 2021: P&H extended the contract delivery period by 90 days pursuant to the terms provided in the contract.
- October 8, October 15, and October 21,2021: P&H contacted Donahue about delivery under the contract; Donahue did not respond.
- November 1, 2021: After contact from P&H, Donahue acknowledged he could bring in the remaining canola due under the contract.
- November 25, 2021: After not receiving additional bushels from Donahue, P&H reached out again. Donahue stated he had truck issues and should be able to get it in the following week.
- November 30, 2021: After still no further delivery from Donahue, P&H reached out again. Donahue claimed he was still having truck issues
- December 1, 2021: P&H informs Donahue he must deliver under the contract by December 8 or be in default; no response back from Donahue.
- December 9, 2021: P&H placed the contract in default and determined a replacement value of $396.83 (x) 223.607 resulting in $88,733.97, plus $2,236.07 in fees for a total amount of $90,969.23 owed to P&H for this contract. Donahue refused to acknowledge or pay these charges.

P&H argues that Donahue failed to fulfill contract obligations for both contracts 211438 and 320213. Donahue argues that P&H incorrectly cancelled contract 320321 without notification and should have extended the delivery date further past the 90 days that were given due to his truck breakdown in early December. Donahue claims the fair market value was incorrectly determined by P&H, and it should be lower due to the large market difference that will need to be paid.

After acting in good faith by extending the delivery dates for both contracts by 90 days, P&H gave Donahue ample time and warning to fulfill his contract obligations before P&H enacted default on the contracts. The market values/replacement costs presented by P&H were consistent with the fair market values at time of default. Donahue had numerous occasions to cancel his contract obligations, but he refused to do so, and as a result, the amount owed increased significantly due to market conditions.

THE DECISION

The arbitration committee unanimously finds as follows:

- P&H acted in good faith by generously extending the delivery windows of the contracts to give Donahue ample time to fulfill his contracts.
- Ample communication was given to Donahue warning of impending contract default without much response from Donahue.
- Donahue acknowledged he was oversold due to production loss, and according to NGFA Grain Trade Rule 28 (A) "Seller's Non-Performance," he had the right to ask for the contract to be deemed in default, but Donahue refused to do so even after P&H offered replacement values.
- P&H correctly applied paragraph 2 of NGFA Grain Trade Rule 28 (A), by deeming the contract in default upon the end of the 90-day delivery extension period
- All fair market values provided by P&H are consistent with the market at the time and applied correctly in accordance with paragraph 2 of NGFA Grain Trade Rule 28 (A).
- Donahue owes 136,836.71 CAD to P&H
- Damages with respect to each contract are as follows:
- Contract 311438
  - Initial contract value: $330.70
  - Market Value: $624.65
  - Difference: ($293.95)
  - MT Cancelled: 150.903 MT
  - Gain/Loss: ($44,357.64)
  - Administration Fees: ($1,509.03)
  - Final value owed: ($45,866.67)
- Contract 320213
  - Initial contract value: $617.29
  - Market value: $1014.12
  - Difference: (396.83)
  - MT Cancelled: 223.607 MT
  - Gain/Loss: ($88,733.97)
  - Administration Fees: ($2,236.07)
  - Final value owed: ($90,970.04)

The Award

The arbitrators awarded 136,836.71 CAD in damages to Parrish and Heimbecker, Ltd. from Keaton Donahue. Interest shall accrue on the award at the rate of 3.25 percent pursuant to NGFA Arbitration Rule 6(F), beginning 30 days after this decision on any remaining dollars not paid by Donahue.

Dated: 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