National Grain and Feed Association
Arbitration Decision
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February 19, 2025

CASE NUMBER 2916

Plaintiff: The Scoular Company, Omaha, NE

Defendant: The Bottom Farms Partnership, Bell City, MO

STATEMENT OF THE CASE

The case involved four hedge-to-arrive (HTA) contracts for the sale of U.S. No. 2 Rough Rice that the claimant, The Scoular Company (Scoular), and the defendant, The Bottom Farms Partnership (BFP), entered into between January 7 and March 11, 2020. All the contracts were created by Scoular and communicated through BFP's agent; signed by both parties; and contained the remark: "This is a hedge to arrive contract, no basis has been set; Basis must be set prior to shipment."

> Contract PE2047701 was an HTA contract and was made on Jan 7 for 22,000 cwt at $12.82/cwt for March 2020 shipment delivery basis "DEL BUSCH JONESBORO".
>
> Contract PE2047727 was an HTA contract and was created on Feb 26, for 40,000 cwt at $13.465/cwt for May 2020 shipment delivery basis "FOB BELL CITY".
>
> Contract PE2367858 was an HTA contract and was made on March 5 for 40,000 cwt at $13.25/cwt for May 2020 shipment delivery basis "FOB BELL CITY".
>
> Contract PE2367869 was an HTA contract and was made on March 11 for 50,000 cwt at $12.94/cwt for May 2020 shipment delivery basis "FOB BELL CITY".

On February 6, 2020, BFP rolled contract PE2047701 from March 2020 to May 2020 shipment at May futures at a $0.20/cwt premium less a $0.01/cwt roll fee. This contract amendment was signed by both parties. On April 27, 2020, BFP rolled all four contracts from May 2020 to July 2020 shipment at July futures at a $0.67/cwt discount less a $0.01/cwt roll fee. These contract amendments were signed by both parties.

On June 19, 2020, BFP again rolled all four contracts from July 2020 to September 2020-July 2021 shipment at September futures at a $7.55/cwt discount less a $0.01 roll fee. All four contract amendments were signed by both parties. On this roll with the wide shipment window, the contracts contained the remark "no basis has been set and shipment period is to be determined once basis is set, basis must be set prior to shipment."

On August 18, 2020, BFP rolled all four contracts that now had a shipment period of September 2020-July 2021 shipment to the November 2021 futures at a $0.015/cwt discount less a $0.01 roll fee. All four contract amendments were viewed (opened in PDF format) but not signed nor objected to. On October 29, BFP rolled all four contracts that still had the shipment period of September 2020-July 2021 shipment to the January 2021 futures at a $0.2025/cwt premium. These amendments were neither signed nor objected to.

On January 15, 2021, BFP rolled all four contracts with the shipment period of September 2020-July 2021 shipment to the March 2021 futures at an $0.18/cwt premium less a $0.01 roll fee. All four contract amendments were signed by Scoular and sent to BFP and BFP's agent. These amendments were neither signed nor objected to.

Following the rolls of the contracts on January 15, 2021, Scoular received no further instructions from BFP or BFP's agent, and Scoular was notified that BFP had terminated its agent. Ongoing communication continued with emails and telephone calls from Scoular personnel to BFP on February 26, March 4, March 11 and March 12 about the need to price and deliver in March 2021 or roll the contracts from March to May futures. It was also noted that on February 26, BFP's agent contacted BFP about either rolling or pricing the contracts by the end of the day on the 26th. Attempts to meet in person between the parties were made, but not accomplished.

Scoular sent a certified letter to BFP posted March 17, 2021, requesting action by BFP to communicate its intention to roll or price the contracts. The letter requested delivery by March 31, 2021, and stated that, according to Scoular, failure to establish basis or roll the contracts by this date would constitute default pursuant to NGFA Grain Trade Rule 28 (A). A copy of the March 17, 2021, letter was also emailed to BFP on April 1, 2021.

In a letter dated April 6, 2021, Scoular informed BFP that since it did not roll the contracts by March 31, Scoular cancelled the contracts at the close of the market the following business day, April 5, 2021. The letter stated cancellation confirmations were sent electronically, and copies of the confirmations were included with the letter, as well as the invoice for payment due to Scoular for the cancellations.

Scoular claimed total damages owed in the amount of $1,154,080.

THE DECISION

The arbitrators thoroughly reviewed and extensively deliberated over all the written evidence from both parties, as well as the testimony presented at the oral hearing.

The arbitrators determined from a review of the evidence and arguments presented, that the four contracts at issue were created, amended, and confirmed in accordance with NGFA Grain Trade Rule 3. The arbitrators noted that neither party disputed the validity or accuracy of the confirmations presented in the evidence.

The arbitrators concluded there was sufficient evidence that Scoular had initiated multiple instances of communication with BFP that the contracts needed to be priced or rolled. BFP's failure to communicate and respond to Scoular was the driving factor resulting in the non-performance of these contracts. The arbitrators recognized that the unpriced HTA contract, which was amended by Scoular and signed by BFP with respect to the roll on June 19, 2020, had a wide shipment window of September 2020-July 2021. This wide delivery window that spanned farther than the referenced futures contract month created confusion and clouded the responsibilities of when the contract had to be priced. Additionally, because of the absence of specific terms in the contracts relating to requirements for pricing prior to the first notice day on the applicable futures month, it was troublesome to pinpoint assessment of fault between the parties. Nevertheless, the contracts had been rolled three times prior to March 2021 (and across crop years) by BFP prior to the first notice day of the referenced futures contract on each of those respective futures month rolls.

The arbitrators agreed unanimously that both parties were at fault to at least some extent in this case.
The arbitrators discussed and deliberated at length regarding each aspect of this case, including the impact of the actions taken by each party on the outcome of the case and the arbitrators' decision. Despite their extensive deliberations and exchanges, the arbitrators ultimately did not reach a unanimous decision.

MAJORITY OPINION

The opinion of the majority of the arbitration committee is BFP refused to acknowledge its responsibility to price or roll the contracts by ignoring all communication from Scoular under the guise it was unable to respond due to planting. The majority also noted that Scoular's contracts were vague and failed to include language providing that failure to roll or price the contracts was grounds for cancelation.

The majority concluded that while BFP failed to properly respond to Scoular's requests, BFP could not be in default with four months still remaining in the contracted delivery period. Therefore, according to the majority of the committee, Scoular's cancellation of the contracts was premature and improper. With this conclusion having been reached by the majority, the committee then deliberated extensively about a potential basis upon which an award for some level of damages might still be appropriate. Despite considerable discussion, the majority of the committee concluded that no sufficient basis had been presented in the case – or was readily ascertainable and identifiable by the committee – upon which to issue an award for damages in favor of Scoular.

THE AWARD

The ruling by the majority opinion of the committee is that no damages are awarded

Decided: June 21, 2023

Submitted by the arbitrators representing the majority of the committee, whose names and signatures appear below

Joe Bourne
Trader
CSC Gold Inc.
Overland Park, KS

Jessica Stephan
Logistics Director
Bunge North America
Chesterfield, MO

MINORITY OPINION

The opinion representing the minority of the arbitration committee is that Scoular acted within the parameters of NGFA Grain Trade Rule 28 by exercising due diligence; that BFP was in default of the contracts; and that option (3) under Rule 28 applied with respect to the cancellation of the contracts in this case. The minority opinion is the proper date that the contracts should have been cancelled was the first notice day of the March 2021 Futures contract, which was Feb. 26, 2021, and not on April 5, 2021. Calculation of the cancellation value on Feb. 26, 2021, would have been unduly punitive to BFP, and the minority would have calculated damages based upon calculations off the closing price on April 5, 2021, and awarded Scoular in the amount of $1,154,080.

Submitted by the arbitrator representing the minority of the committee, whose names and signatures appear below

Travis Antonsen, *Chairman*
SVP Grain Marketing and Rail Logistics
Agtegra Cooperative
Aberdeen, SD

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February 19, 2025

ARBITRATION APPEAL CASE NUMBER 2916

Appellant/Plaintiff: **The Scoular Company, Omaha, NE**

Appellee/Defendant: **The Bottom Farms Partnership, Bell City, MO**

DECISION OF THE APPEALS COMMITTEE

The original three-member Arbitration Committee unanimously agreed that there was mutual fault by both parties in this case. However, in a split decision, the majority opinion of the Arbitration Committee was The Scoular Company (Scoular) improperly cancelled four Hedge-to-Arrive (HTA) contracts Scoular had written with The Bottom Farms Partnership (BFP) well before the end of the shipment period as noted on the contracts. The minority opinion of the Arbitration Committee was that Scoular exercised due diligence and was justified in cancelling the contracts since BFP ignored all communication initiated by Scoular using various platforms regarding BFP's intentions in completing the contracts.

The Arbitration Appeals Committee, both individually and collectively, reviewed all the arguments and supporting documents provided in the record of the case for Arbitration Case 2916, including the findings and conclusions reached by the original Arbitration Committee.[1] The Arbitration Appeals Committee further reviewed the briefs of the appellant and appellee filed in the appeal. An oral hearing was also conducted in this case in which both parties presented their arguments to the Arbitration Appeals Committee.

As detailed by the original Arbitration Committee, BFP, through its marketing advisory service (Agent), initiated a marketing plan for its 2021 rough rice crop production by selling four HTA contracts to Scoular. BFP sold each of these HTA contracts using either March 2020 or May 2020 as the initial referenced futures contract, effectively initiating an old crop/new crop spread strategy. There was no evidence presented that Scoular recommended this marketing strategy which certainly carries a much higher degree of price risk. Since BFP did not object, it appears that this was a conscious decision made by BFP.
Scoular's contract confirmations stated **"THIS IS A HEDGE TO ARRIVE CONTRACT, NO BASIS HAS BEEN SET. BASIS MUST BE SET PRIOR TO SHIPMENT."** Clearly, HTAs are unpriced contracts since the basis component remains unestablished and further action must be undertaken by BFP.

NGFA Grain Trade Rule 9 [Unpriced Contracts] is very specific, stating, *"… Pricing shall not go beyond the contracted date of shipment, the date of actual shipment, or the day before the first notice day of the*

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[1] The original Arbitration Committee's decision appears to contain a typographical error. The decision states, "*On August 18, 2020, BFP rolled all four contracts that now had a shipment period of September 2020 – July 2021 to the November 2021 futures…*" The correct futures option referenced and relied upon by both the original Arbitration Committee and Appeals Committee should be November 2020.

contract futures month involved, whichever comes first." BFP's agent's understanding of Rule 9 was evidenced by its actions of rolling futures on one of the contracts six times and the other three contracts five times, all prior to First Notice Day (FND) of the underlying referenced futures. It was somewhat confusing that the contracts provided a shipment period of "September 2020 – July 2021" in the remarks section and no specific date that action needed to be taken by BFP to either roll the referenced futures month or establish basis. However, it is noted that the Agent rolled the HTA referenced futures three times with the wide shipment window that the HTA contracts contained, and BFP did not object to those actions.

The Agent provided bi-weekly strategy updates specific to BFP. In the Agent's email of December 17, 2020, it states, *"All of the January Scoular hedges have now been rolled to March at 18 cents/cwt carry."* Scoular's contract documentation showed the date rolled was January 15, 2021. Scoular gave no explanation why its contracts used the January 15, 2021, dates. At some point after the HTA contracts were rolled to March 2021 referenced futures, BFP terminated its Agent.

On February 26, 2021, the Agent after receiving notification from Scoular, sent BFP an email with a subject line of: "Need instructions to roll or set basis". In the body of that email was the following:

> *Today is 1st Notice day for the March board which means that basis needs to be set on the HTA contracts and then the physical rice delivered (whichever elevator or delivery point you want to use),*
>
> ***OR**, [emphasis in original] the HTA contracts can be "rolled" to May, and you will pick-up about 29 cents "carry" which will be added to the current price of the HTA. If you do this then you can set the basis and make delivery of the rice on this contract as late as May.*
>
> *Either way this needs to be done today.*

After receiving no response from BFP to this message, Scoular made multiple attempts to elicit a response from BFP regarding the HTA contracts. Scoular was able to reach BFP by telephone on March 8, 2021, to discuss the HTA contracts. In that conversation, BFP requested a 'face-to-face meeting" with Scoular but failed to respond to Scoular's offer to meet at BFP's farm the following week. BFP then stopped all communication with Scoular, as the original Arbitration Committee noted, under the guise that BFP was unable to respond due to planting their crops.

As the original Arbitration Committee unanimously agreed, so did the Arbitration Appeals Committee, that both parties were at fault to at least some extent in this case. Both Scoular and the Agent who negotiated the initial HTA contracts knew that further action was necessary prior to FND. Scoular's failure to memorialize those dates within the body of the contract documentation exemplifies the importance of specifically listing those dates to eliminate uncertainty. The termination of the Agent, and the failure of BFP to communicate such termination to Scoular before finalization of the contracts could explain a minimal delay in BFP's awareness of its responsibilities. Both Scoular and the Agent made efforts to concisely explain BFP needed to take immediate action regarding the contracts. BFP is not absolved of its responsibility to either set the basis or roll the futures to another option month regardless of the shipment period listed. Scoular, after receiving no communication or instructions from BFP to either set basis or roll to another future month, cancelled the four rice HTA contracts at fair market value as called for in **NGFA Grain Trade Rule 28 [Seller's Non-Performance (A) (3)].** Scoular calculated damages on the four rice HTA contracts as $1,154,080. BFP did not contest the calculation of the damages amount.

THE AWARD

The Arbitration Committee, as did the Arbitration Appeals Committee, unanimously agreed that both parties are at fault to varying degrees in this case. Scoular's initial HTA contract confirmations listed the shipment period on each contract that matched the underlying referenced future month as is custom of the trade. Scoular changed this methodology when the referenced futures were rolled to September 2020 and instead listed a shipment period of September 2020 – July 2021. Nor did Scoular's HTA contract confirmations provide a specific date that basis must be set or futures rolled to another futures option by BFP.

This wide shipment window may have initially created confusion that further action must be undertaken by BFP. However, there were several subsequent HTA referenced future rolls with the wide shipment period that BFP did not object to. Nevertheless, Scoular's contract deficiencies are far overshadowed by BFP's disregard of all communication efforts concerning BFP's intent to either complete or not complete the contracts. BFP was disingenuous in that it refused to communicate with Scoular in some manner regarding BFP's intentions to complete the HTA contracts by setting basis, or if BFP wanted to wait for a later delivery period, roll the contracts to another futures option month. The requirement that BFP must act was clearly detailed to BFP by the Agent in the February 26, 2021 email discussed. BFP chose to ignore all communications with Scoular about whether BFP would complete delivery on the four HTA contracts. For these reasons, the Arbitration Appeals Committee unanimously agrees Scoular was justified in cancelling the contracts after receiving no instructions of BFP's intent to complete the four HTA contracts and overturns the majority decision of the original Committee.

The Arbitration Appeals Committee by unanimous decision reduces Scoular's requested damages by 25% to $865,560.00. Scoular omitted specific dates within the contract confirmations that BFP must set basis or roll to another option month; performed sloppy contract management; and sent a poorly worded demand for adequate assurance letter that BFP must respond if they would or would not complete the contracts. But these deficiencies by Scoular had less of an impact on the outcome of this dispute than BFP's complete disregard of all methods and attempts by Scoular to communicate regarding BFP's intent to complete the contracts.

For these reasons, the Arbitration Appeals Committee by unanimous agreement awards $865,560 to The Scoular Company from The Bottom Farms Partnership. The Arbitration Appeals Committee further awards to The Scoular Company interest on the award at a rate of 3.25% pursuant to NGFA Arbitration Rule 6(F). Interest shall accrue from the date of this award until it is paid in full by The Bottom Farms Partnership.

Decided: January 14, 2025

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

Jay Mathews, *Chair*
CEO
Prairieview Grain Trading
Champaign, IL

Jean Bratton
CEO
Centerra Co-op
Ashland, OH

Sean Broderick
Director, Risk – Ethanol and DDG
CHS, Inc.
Inver Grove Heights, MN

Craig Haugaard
Grain Division Manager
Superior Ag
Huntingburg, IN

Steven Nail
President & CEO
Farmers Grain Terminal Inc.
Greenville, MS