



National Grain and Feed Association Arbitration Decision

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December 13, 2013

CASE NUMBER 2589

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Alan Bland, Rogers, Texas

STATEMENT OF THE CASE

This arbitration case involved two contracts between the buyer, Cargill Inc. (Cargill), and the seller, Alan Bland (Bland), for delivery of 50,000 bushels of U.S. No. 2 sorghum and 20,000 bushels of hard red winter wheat to Cargill's facility in Houston, Texas.

Cargill claimed that Bland initiated both contracts by telephone. Cargill stated that the wheat contract resulted from a telephone call by Bland to Cargill on July 8, 2010, during which the parties agreed to a price of \$6.1650 per bushel and a June 2011 shipment period for the 20,000 bushels of wheat. Cargill also stated that the sorghum contract similarly resulted from a telephone call by Bland on Sept. 30, 2010. During that call and a second call also on Sept. 30, according to Cargill, the parties set the pricing terms at "USD 0.2500 Under Chicago Corn Dec 11 per Bushel" and agreed to an August 2011 shipment period for the 50,000 bushels of sorghum.

Cargill claimed that for both contracts it mailed contract confirmations to Bland on the day following the respective telephone calls. Cargill stated that after not receiving any responses from Bland, it followed its standard practice by sending additional copies of the confirmations to Bland, following up with Bland by telephone, and even hand-delivery of copies of the confirmations to Bland's home. Bland did not return executed copies of the confirmations or provide any other written responses to Cargill. Cargill argued that this was consistent with prior dealings between the parties given that before this dispute Bland and Cargill had both performed under six separate grain contracts that Bland similarly had not executed.

Bland delivered 7,502.62 bushels of wheat to Cargill in May 2011. Bland did not make any further deliveries of grain to Cargill. Cargill cancelled the undelivered portion of the wheat contract and sent notice of the cancellation to Bland on Aug. 11, 2011. Based upon the default of the wheat contract, Cargill sent to Bland a demand for adequate assurances related to the sorghum contract also on August 11. Cargill claimed it received no response from Bland and then cancelled the sorghum contract on August 19.

Cargill claimed damages under the wheat contract for the difference between the contract price and market price at the time of cancellation (\$2.385 per bushel) for a total of \$29,806.25. Cargill claimed damages under the sorghum contract for the difference between the contract price and the market price on the date of cancellation (\$3.1625 per bushel) for a total of \$158,125. Cargill also claimed fees, costs and interest.

Bland did not dispute the validity of the wheat contract in this arbitration case. Bland admitted to default of 12,497.38 bushels of wheat under this contract. However, Bland disputed the validity of the sorghum contract. Bland denied that the telephone conversations and other communications occurred related to the sorghum contract that Cargill claimed took place beginning on Sept. 30, 2012.

To support its position that Bland had received and agreed to both confirmations, Cargill produced affidavits from the grain merchants involved detailing the telephone conversations and other communications that Cargill claimed occurred.

Cargill also produced handwritten notes from those merchants, which Cargill presented were taken contemporaneously in standard practice as those communications between the parties were occurring, including a telephone call on Nov. 2, 2010, during which Bland allegedly acknowledged his obligations under the sorghum contract.

Bland challenged the authenticity of Cargill's evidence arguing that it was not credible because the sources of those affidavits and materials were Cargill employees. Bland claimed that Cargill had failed to produce sufficient objective evidence to support the validity of the sorghum contract. Bland stated that because he did not sign and return the sorghum contract confirmation, he should not be required to honor it. Bland also contested NGFA's jurisdiction to resolve this dispute.

THE DECISION

The arbitrators determined that Cargill produced sufficient evidence that Bland had received and was aware of the sorghum contract notwithstanding that he did not sign and return the contract confirmation to Cargill. Bland had similarly not signed or returned confirmations for the wheat and previous six unrelated contracts that he acknowledged and at least partially performed upon.

NGFA Grain Trade Rule 3 [Confirmation of Contracts] provides that if either party sends a written confirmation of a contract to the other, then it is binding unless the other party advises of any disagreement with the confirmation. The contract confirmations in this case included a provision that the NGFA Grain Trade Rules applied. With respect to NGFA having jurisdiction to arbitrate this case, the confirmations also provided that any disputes arising under the contracts shall be resolved by NGFA Arbitration. Further, this case was referred to NGFA by order of the District Court for Bell County, Tex., dated Sept. 26, 2011, which stated that "all claims" by Cargill against Bland be submitted to NGFA arbitration.

There was no dispute that Bland had defaulted on the wheat contract. Both parties acknowledged the validity of the wheat contract. The arbitrators awarded \$29,806.25 to Cargill for damages under this contract. Because Bland had acknowledged its default under this contract and attempted to resolve its debt with Cargill, the arbitrators declined to award Cargill any additional costs or interest associated with the wheat contract.

After reviewing and discussing the evidence and arguments presented by the parties, the arbitrators concluded that the sorghum contract was also valid. The arbitrators determined that the evidence demonstrating that Bland had initiated and acknowledged the sorghum contract in the same manner as the other contracts was credible and compelling. Based upon the prior dealings between the parties, that Bland did not sign and return that particular confirmation did not relieve him of obligations under that contract.

THE AWARD

The arbitrators, therefore, awarded to Cargill the total principle amount of \$187,931.25 for damages under the wheat and sorghum contracts. The arbitrators also awarded to Cargill interest on the award related to the sorghum contract of \$158,125.00 from the date of this decision until the award is paid at the rate of 3.25% per annum.

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

Shelley Wybo, Chair
Manager, Commodity Purchasing
Ingredion Canada Incorporated
London, Ontario

David Leiting
General Manager
Farmers Cooperative Elevator
Arcadia, IA

Mitchell Payne
Manager
Columbia County Grain Growers
Dayton, WA