National Grain and Feed Association

Arbitration Decision

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October 22, 2009

Arbitration Case Number 2213

Plaintiff: Bunge North America Inc., St. Louis, Mo.

Defendant: Dixie Ag Services Inc., Reydell, Ark.

Statement of the Case

The plaintiff, Bunge North America Inc. (Bunge), submitted an arbitration complaint to the National Grain and Feed Association (NGFA). The complaint alleged that Dixie Ag Services Inc. (Dixie) failed to perform on contract number 109638, which was signed by both parties, for delivery of 25,000 bushels of U.S. No. 2 soft red winter wheat.

Bunge claimed $45,250 in damages.

On May 31, 2006, Bunge purchased 25,000 bushels of U.S. No. 2 soft red winter wheat from Dixie for delivery between June 1 and July 31, 2007, to Bunge's elevator in Pine Bluff, Ark. Bunge issued purchase confirmation number 109638 (the "Dixie wheat contract"), a hedge-to-arrive contract. Mark Sheppard ("Sheppard") signed the Dixie wheat contract on behalf of Dixie.

The contract stated that it was, "SUBJECT TO RULES OF: NATIONAL GRAIN AND FEED ASSOCIATION." The contract also contained the following provision under its "GENERAL TERMS" section:

> "The terms of this confirmation are subject in all respects to the rules and regulations of the exchange, board, or association designated above. If Seller is not a member of the said exchange, board or association, then the rules of the National Grain and Feed Association shall govern. Buyers and Sellers agree that all disputes and controversies shall be arbitrated according to said rules and regulation, and that judgment may be entered on the arbitration award in any court of competent jurisdiction."

In mid-June 2007, Sheppard spoke with the manager at Bunge's Pine Bluff elevator. Sheppard informed Bunge that he would not have enough wheat to fulfill the Dixie wheat contract. Sheppard asked if the contract could be rolled, but was advised that Bunge would not do so. Sheppard stated he would speak with Bunge's Southern District commercial manager. After conferring with a Bunge grain marketing specialist, Bunge's Pine Bluff elevator manager contacted Sheppard to confirm that the Dixie wheat contract would not be rolled. The two parties discussed whether Sheppard would be cancelling the contract or delivering the wheat by the end of the shipment period. Sheppard stated he did not want to cancel the Dixie wheat contract.

On July 2, 2007, Sheppard established the basis for the Dixie wheat contract at $0.63 under the CBOT wheat futures price, resulting in a contract value of $3.94 per bushel. During the first week of July, the Bunge elevator manager and grain marketing specialist visited Sheppard at his farm shop. Sheppard then met with Bunge's Southern District commercial manager and another Bunge district manager (a fourth Bunge representative). Sheppard explained that he did not have enough wheat to fulfill the Dixie wheat contract, but at that time he did not want to cancel the contract. Bunge advised Sheppard that if he did not deliver the wheat or cancel the Dixie wheat contract prior to the close of business on July 31, 2007, then Bunge would cancel the contract.

At the close of business, July 31, 2007, Bunge cancelled the Dixie wheat contract, as Dixie had failed to deliver any of the wheat.

On Aug. 1, 2007, Bunge sent Dixie, via certified mail, a letter notifying Dixie of the cancellation, along with an invoice for the market difference and cancellation fees due Bunge upon the cancellation of the Dixie wheat contract. Bunge claimed $45,250 in damages. Sheppard signed the certified mail receipt on Aug. 14, 2007.

In its written arbitration response, Dixie did not dispute the basic facts of the case or any of the conversations with Bunge's representatives.

The Decision

The arbitrators determined that both parties entered into a binding hedge-to-arrive contract; both parties signed the contract; and the contract specifically stated, "SUBJECT TO RULES OF: NATIONAL GRAIN AND FEED ASSOCIATION."

The arbitrators also determined that both parties entered into and agreed upon a basis level of $0.63 per bushel, establishing a value of $3.94 per bushel for the U.S. No. 2 soft red winter wheat.

Sheppard was advised that Bunge would not allow the Dixie wheat contract to be rolled to a future delivery period. Sheppard also was advised that Bunge would cancel the Dixie wheat contract if he did not deliver the wheat or cancel the contract prior to the close of business on July 31, 2007.

In its arguments, Dixie referred to weather-related conditions that arose in the fall of 2006 and spring of 2007 that affected Dixie's planting and crop yields, as well as simultaneously occurring family-related issues that Dixie said affected its focus on market prices. However, Dixie failed to notify Bunge of any potential problems in fulfilling the contract in a timely manner, and Dixie declined to cancel the contract through the end of the delivery period. Dixie sought to declare *force majeure* because of production-related issues caused by a wet fall season and yields reduced by a late-season freeze.

But the arbitrators determined that *force majeure* did not apply under these circumstances, including because the contracts did not provide for a declaration of *force majeure* by the seller.

The Award

Based upon the materials provided, the arbitrators awarded $45,250 to the plaintiff, Bunge North America Inc. The arbitrators declined to award any interest to Bunge, but did award Bunge its request for reimbursement of all arbitration fees amounting to $852.50.

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

Kent Kupfner, *Chair*
Commodity Merchant
Columbia Grain International Inc
Great Falls, Mont.

Kevin T. Walker
Manager
Heritage Grain Cooperative
Bethany, Ill.

Kayra S. Weisbrod
Grain Originator
StateLine Cooperative
Cylinder, Iowa