National Grain and Feed Association
Arbitration Decision
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September 26, 2019

CASE NUMBER 2839

PLAINTIFF: **OAKLEY GRAIN, INC.**
NORTH LITTLE ROCK, AR

DEFENDANT: **MIKE STECKS AND JO ANN STECKS**
LONOKE, AR

STATEMENT OF THE CASE

The transactions and grain settlements at issue in this case centered on three basis contracts, which were closed out by the plaintiff, Oakley Grain, Inc. ("Oakley"): contract number 76999 for 37,565.91 bushels of yellow corn and contract number 80615 for 8,888.01 bushels of soft red wheat with the defendant, Mike Stecks; and contract number 80616 for 3,355.23 bushels of soft red wheat with the defendant, Jo Ann Stecks. This case also concerned contract number 99278 for soybeans with Mike Stecks, which Oakley used to offset an accounts receivable balance that it claimed resulted from advances paid for the other contracts with the Stecks and negative cash prices from settlement of those contracts.

The parties provided copies of the purchase confirmations, delivery sheets, settlement sheets, and disbursement checks to the arbitrators. A sheet recapping the history of the rolling of the contracts, including the final pricing, was in the documents provided, but no copies of actual confirmations related to the rolling of the contracts were provided.

Contract 76999 was created on December 19, 2014, and subsequently rolled 13 times. The contract was priced on August 31, 2017, with a value/basis of -$1.20/bu. using the September 2017 corn futures contract resulting in a $2.15/bu. price.

Contract 80615 was created on July 14, 2015, and subsequently rolled 10 times. The contract was priced on August 31, 2017, with a value/basis of -$1.85/bu. using the September 2017 soft red winter wheat futures contract resulting in a $2.25/bu. price.

Contract 80616 was created on July 14, 2015, and subsequently rolled 11 times and priced on November 27, 2017, with a value/basis of -$2.09/bu. using the December 2017 soft red winter wheat futures contract resulting in a $2.00/bu. price.

Contract 99278 was settled on August 31, 2017, at a $9.75/bu. price with net proceeds of $2,475.39 to Mike Stecks for bushels in storage that Oakley upon settlement applied toward the accounts receivable balance for the three basis contracts.

Oakley claims Mike and Jo Ann Stecks defaulted on contracts 76999, 80615, and 80616. According to Oakley, after taking account of quality-related deductions and advance payments, at settlement the contracts resulted in a negative value. Oakley seeks damages of $59,340 from Mike Stecks and $10,390 from Jo Ann Stecks for their alleged default on the contracts.

In their counterclaim against Oakley, the Stecks argue Oakley breached the three basis contracts by rolling them in excess of the contract terms. The Stecks refer to contract 76999 that provides, "Basis will roll 2 times at market spread," and contracts 80615 and 80616 that both provide, "2 ROLLS AT MARKET SPREAD" and "PRICE BY LAST TRADING DAY JUNE 2016." The Stecks claim that had Oakley complied with each contract and settled at the second roll period, the result would be a net payment due the defendants.

Oakley argues the Stecks were aware of and consented to the rolls of these contracts and had in the course of dealing with Oakley rolled other basis contracts, not at issue in this case, several times past the number of rolls indicated in the contracts. Oakley claims the Stecks elected to set the basis and remain open on the futures and that the contracts provided for rolling. According to Oakley, the transactions in this dispute arise out of a history of related grain transactions between the parties. Oakley states that the Stecks have delivered grain to Oakley for over five years. Oakley states the defendant, Mike Stecks, farmed with his father, Mike Stecks, Sr., and after the father passed away, grain was delivered in the name of the mother, Jo Ann Stecks. Oakley claims the Stecks have a family history of entering into basis contracts and rolling those contracts in excess of the rolls provided for in the contracts as well as extending the pricing date. Oakley further claims the Stecks had a duty to communicate with Oakley, and the Steck's silence and failure to return Oakley's attempts at communication was not a valid defense against Oakley's claims.

The Stecks dispute that any course of dealings between the parties and other arguments presented by Oakley allowed for the rolling of the contracts in contradiction to the express terms of the contract and the NGFA Trade rules. According to the Stecks, in the absence of written verification of any amendments to the contracts, the express terms apply, which Oakley clearly violated by its own admission. The Stecks argue that NGFA Grain Trade Rules 3(B) and 4 prohibit the introduction of extrinsic evidence offered to vary the terms of a written agreement. The Stecks claim Oakley failed to properly monitor these contracts and follow their express terms.

In their counterclaim, the Stecks further argue the storage charges claimed by Oakley under contract 76999 for $8,312.81 are unsupported and mistaken. The parties further dispute in their arguments whether these charges predate the one-year deadline for filing an arbitration claim and are, therefore, time-barred. Also, in their counterclaim, the Stecks claim they are due payment for the soybean contract. Initially in this dispute, the Stecks also claimed they were owed for quality-related test weight charges and dockage discounts, but they ultimately abandoned that claim.

THE DECISION

The quality-related discounts, including any disputes involving test weight or dockage discounts, are no longer a contention in this case and, thus, will remain as at the time of settlement of the contracts by Oakley. Trade practice is for storage charges to accrue unless ownership of the grain is transferred to the warehouseman. Trade practice is for deduction of storage charges at the time of settlement, and, thus, the storage charges will remain as at the time of settlement of the contracts by Oakley. The claim for storage charges was submitted within the time requirements of this arbitration process.

The rolling of basis contracts, while limited to two rolls under the terms of the contracts in this dispute, is often done several more times in actual practice within the trade, as an accommodation to the customer. In this case, there appears to be precedent and prior history between the parties of such multiple rolling of contracts. There is also evidence that Oakley attempted to discuss rolling the contracts with Mike Stecks by telephone, but the calls were not answered or returned. However, NGFA Grain Trade Rule 4 [Alteration of Contract] provides a contract cannot be amended without the express consent of both parties and any mutually agreed upon alteration of a contract must be immediately confirmed by written communication by both parties. Oakley presented no evidence that it properly amended the contracts for the additional rolls or informed the Stecks of the new basis levels that would result on the contracts.

Therefore, the arbitrators agreed the first two rolls are acceptable. Oakley had reason to expect these were acceptable to the Stecks, but Oakley also had the obligation to send to the Stecks the amended contract basis adjustments after each subsequent roll. The arbitrators also considered that the Stecks permitted those unpriced contracts to remain in an unknown status for multiple roll periods without attempting to discuss with Oakley. For the Stecks to retroactively base their claims on older expired futures prices, well after the timeline of this arbitration, is not normal trade practice.

The arbitrators decided the rolls in excess of two rolls will be adjusted in calculating the monetary award. Both parties shall share in the responsibility: the Stecks for not returning calls to discuss the pricing status of the contract or their intent to either price the contract or continue rolling them; and Oakley for assuming continued rolls were permissible based on prior dealings along with not sending contract confirmations on each subsequent roll to the Stecks.

Therefore, the subsequent basis changes attributable to the basis rolls in excess of two for each contract will be shared by the plaintiff and the defendants using a 50/50 split, as well as the change in future levels, calculated as follows:

Mike Stecks

Contract #	80615		
Bushels	8,888.01		
Original Invoice		Due Oakley	$21,480.19
Wheat Futures			
WH16	$4.4500	2/29/2016	
WU17	$4.1025	8/31/2017	
Difference	$0.3475		
Split 50%	0.17375	x 8,888.01 bu	
		Due Stecks:	$1,544.29
Wheat Roll Total	1.31	WH16 to WU17	
Split 50%	0.655	x 8,888.01 bu	
		Due Stecks:	$5,821.65
Contract #	**80615**	**NET DUE OAKLEY**	**$14,114.25**

Mike Stecks

Contract #	76999		
Bushels	37,565.91		
Original Invoice		Due Oakley	$40,335.14
Corn Futures			
CN15	$4.1400	6/30/2015	
CU17	$3.4225	8/31/2017	
Difference	$0.7175		
Split 50%	$0.35875	x 37,565.91 bu	
		Due Stecks:	$13,476.77
Corn Roll Total	0.92	CN15 to CU17	
Split 50%	0.46	x 37,565.91 bu	
		Due Stecks:	17,280.32
Contract #	**76999**	**NET DUE OAKLEY**	**$9,578.05**

Jo Ann Stecks

Contract #	80616		
Bushels	3,355.23		
Original Invoice		Due Oakley:	$10,390.83
Wheat Futures			
WH16	$4.4500	2/29/2016	
WZ17	$4.0950	11/27/2017	
Difference	$0.3550		
Split 50%	$0.1775	x 3,355.23 bu	
		Due Stecks:	$595.55
Wheat Roll Total	1.55	WH16 to WZ17	
Split 50%	0.775	x 3,355.23 bu	
		Due Stecks:	$2,600.30
Contract #	**80616**	**NET DUE OAKLEY**	**$7,194.98**

SUMMARY

	Contract		
Mike Stecks	80615	$14,114.25	Due Oakley
	76999	$9,578.05	Due Oakley
	99278	-$2,475.39	Credit Stecks
		$21,216.91	Net = Due Oakley
Jo Ann Stecks	80616	$7,194.98	Due Oakley
		$28,411.89	**Total due Oakley**

Thus, Oakley is due damages from Mike Stecks in the amount of $21,216.91 and from Jo Ann Stecks in the amount of $7,194.98 in default.

THE AWARD

The arbitrators awarded a total of $28,411.89 to Oakley Grain, Inc. from Mike Stecks and Jo Ann Stecks.

Decided: August 28, 2019

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

Mark Heil, *Chair*
General Manager
Prairie Central Cooperative Inc.
Chenoa, IL

John Graverson
Grain Department Manager
Ray-Carroll Grain Growers Inc.
Richmond, MO

Mark Swerczek
Origination Manager
Bartlett Grain Co.
Hamburg, IA