



National Grain and Feed Association

Arbitration Decision

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January 18, 2007

Arbitration Case Number 2127

Plaintiff: Badger Grain Co., Inc., Darien, Wis.

**Defendants: Golden Grain LLC, Ripon, Wis.
MB Commodities Inc., Boulder, Colo.**

Statement of the Case

On Nov. 11, 2004, Badger Grain Co., the plaintiff, entered into three contracts to sell a total of three 25-car units of corn (approximately 262,500 bushels) to Golden Grain LLC, the defendant, for shipment between Nov. 20, 2004 and Jan. 31, 2005. The co-defendant, MB Commodities Inc., brokered the transaction and sent contract confirmations (numbers 4110765, 4110766 and 4110767).

The delivery terms of the contracts originally provided for “*Basis Delivered Argo Illinois: Buyer Guarantees a Wisconsin Unload.*” Four days later, based upon discussions between Badger Grain and Golden Grain through MB Commodities, the delivery terms of the contracts were clarified to provide for “*Basis delivered Argo Illinois: Buyer guarantees a Ripon [Wisconsin] Unload.*”

In this arbitration case, Badger Grain presented the following assertions:

1. The contract was amended to specify Ripon, Wis., as the delivery point, excluding any other destinations.
2. Golden Grain deducted \$238 per car on 75 cars, which represented the difference between the tariff rate for equipment furnished by Wisconsin and

Southern Railroad (WSOR) to Chicago, Ill., and the special one-time tariff rate for delivery to Ripon.

Badger Grain claimed that it was due a total of \$17,850, plus interest, from Golden Grain.

In response to Badger Grain’s claims, Golden Grain and MB Commodities asserted the following:

1. To accommodate Badger Grain’s desire to have its rail equipment returned promptly, Golden Grain indicated that it intended to take delivery at Ripon. No amendment to the contract terms was necessary.
2. Golden Grain deducted \$238 per car on 75 cars, which represented the rate spread difference, as set forth by the WSOR railroad, for delivery from Darien, Wis., to Argo, Ill., in contrast to delivery from Darien to Ripon.

Golden Grain requested reimbursement of the arbitration fee. MB Commodities requested payment for its brokerage services for the transactions, plus interest, as well as reimbursement of the arbitration fee.

The Decision

The arbitrators determined that NGFA Grain Trade Rule 3(C) [“Confirmation of Contracts”] provides that the terms and specifications contained in the confirmation issued by the broker (MB Commodities) shall govern the contract. The arbitrators also noted that NGFA Grain Trade Rule 2(E) [“Brokers”] provides as follows:

“A broker that, in good faith, negotiates, or facilitates the execution of, a contract in accordance with instructions from both principals...and that completes such negotiations or facilitation in accordance with the rules and customs governing such transaction, thereby fulfills all obligations and has no further liability to either principal.”

The arbitrators concluded that MB Commodities fulfilled its role as a broker and sent out contract confirmations on Nov. 11, 2004, which stated the terms and conditions of the contracts. Badger Grain signed and returned a faxed copy of the contract on the same day, thereby accepting the terms of the contract that stated the delivery terms as “*Basis Delivered Argo Illinois: Buyer Guarantees a Wisconsin Unload.*” The arbitrators determined that, according to NGFA Grain Trade Rule 1(H)(3), Argo, Ill., was consequently established as a rate-basing point for the contract, with the actual delivery point in Wisconsin to be determined at a later date. The arbitrators decided that as is common trade practice, the rate-basing point was used to establish the contract basis subject to the actual delivery point freight differential when the destination became known.

On Nov. 15, 2004, four days after the original transactions, Badger Grain expressed concern that it did not want its rail equipment moving too far from the point of origin. Badger Grain then requested specific information from Golden Grain about

where it intended to unload the corn trains. Golden Grain indicated it intended to unload the trains at Ripon, Wis. Badger Grain then faxed the original contracts to MB Commodities with a change in the delivery terms. The new delivery terms then provided, “*Basis Delivered Argo Illinois: Buyer Guarantees a Ripon Unload.*” This change was initialed by Badger Grain. MB Commodities verbally informed Golden Grain of the change made by Badger Grain, but no amendment to the contract was sent because Ripon was applicable as a destination under the original contract terms.

The arbitrators relied upon NGFA Grain Trade Rule 1(H)(3) to determine that the delivery basis for the contract remained as Argo, Ill. Badger Grain initialed the change from “*Wisconsin*” to “*Ripon [Wis.]*,” which the arbitrators determined did not change the delivery basis from Argo, Ill. The arbitrators concluded that Golden Grain was correct in deducting \$238 per car from its settlements based upon the rates quoted by the WSOR for the spread between Argo and Ripon.

The Award

Therefore, it was ordered that Badger Grain reimburse Golden Grain \$578.50 for its arbitration fee. It also was ordered that Badger Grain pay MB Commodities \$1,312.50 for brokerage on the contracts, plus \$578.50 for its arbitration fee.

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

Dean McIntosh, *Chair*
Merchandiser
Attebury Grain Inc.
Amarillo, Texas

Dean Hill
Grain Merchant
Interstate Commodities Inc.
Orange Park, Fla.

Robbie Kidd
Manager
Harris Crane Inc.
Charlotte, N.C.

January 18, 2007

Arbitration Appeals Case Number 2127

Appellant: **Badger Grain Co., Inc., Darien, Wis.**

Appellees: **Golden Grain LLC, Ripon, Wis.**
MB Commodities Inc., Boulder, Colo.

The Decision

The Arbitration Appeals Committee, individually and collectively, reviewed all evidence submitted in Arbitration Case Number 2127. It also reviewed the findings and conclusions of the original Arbitration Committee.

The Arbitration Appeals Committee unanimously affirmed the decision of the Arbitration Committee in favor of the Appellees.

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

John McClenathan, *Chair*
Vice President - Grain Group
Archer Daniels Midland Co.
Decatur, Ill.

John C. Anderson
CEO
Ritzville Warehouse Co.
Ritzville, Wash.

Steve Campbell
Vice President
Louis Dreyfus Corporation
Kansas City, Mo.

Philip L. Hageman
Hageman and Associates LLC
Surprise, Ariz.

Donald W. Wenneker
Director of Procurement
Tate and Lyle Ingredients Americas Inc.
Decatur, Ill.