



National Grain and Feed Association

Arbitration Decision

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September 29, 2005

Arbitration Case Number 2091

Plaintiff: The Farmers Grain Co. of New Berlin, New Berlin, Ill.

Defendants: FGDI LLC, Bowling Green, Ohio;
Edward E. Smith & Co. Inc., Atlanta, Ga.

Arbitration Case Number 2091-B

Third-Party

Plaintiff: FGDI LLC, Bowling Green, Ohio

Third-Party

Defendants: Purina Mills LLC, Shoreview, Minn.

STATEMENT OF THE CASE

On Feb. 13, 2003, FGDI LLC ("FGDI") purchased 94,500 bushels of corn F.O.B. New Berlin, Ill. from The Farmers Grain Co. of New Berlin ("Farmers Grain"). Representatives of FGDI and Farmers Grain subsequently signed a confirmation of this transaction (FGDI purchase contract number 0026367). Edward E. Smith & Co. Inc. ("EE Smith") brokered the transaction and issued a confirmation of the trade on Feb. 14, 2003 (EE Smith contract number 47757). None of the parties disputed the basic terms of this trade.

On April 15 and 16, 2003, Farmers Grain loaded five rail cars with corn and applied them to the contract with FGDI. FGDI, in turn, applied these five rail cars to two contracts in which it had agreed to sell 126,000 bushels of corn to Purina Mills LLC ("Purina Mills"). The cars were placed at Purina Mills' facility at Lake City, Fla., on May 3. On May 5, Purina Mills notified FGDI of a problem with the seals on the five cars, and FGDI in turn notified Farmers Grain of this problem. On May 14, Purina Mills notified by e-mail that it was rejecting the five cars, "...due to the fact that they were not sealed on the top or bottom and the tops were not latched. The integrity of the grain was in question."

FGDI submitted payment to Farmers Grain for the corn on May 17, and in so doing reduced the payment to Farmers Grain by

\$14,260.31. FGDI identified this deduction as "freight differential" on its settlement sheet. In the written arguments presented in this case, FGDI described this deduction as representing the freight for shipping the cars to Lake City (\$16,084.34) minus the difference in value from the New Berlin origin purchase price to the F.O.B. Lake City sale price of the salvaged product (\$1,824.03).

Farmers Grain filed this arbitration action to recover the \$14,260.13 from FGDI or, in the alternative, from EE Smith. In support of its claims, Farmers Grain argued that FGDI prepared and signed the original bills of lading without noting or requesting any seal numbers; that FGDI had ample opportunity itself to seal the rail cars before signing the bills of lading; and that neither FGDI nor EE Smith notified Farmers Grain that seals were required. Farmers Grain further asserted that there was no evidence of loss, damage or contamination to the corn. Farmers Grain also disputed the charge for "freight differential" based upon a provision in the EE Smith contract that stated, "[a]ny increase or decrease in freight rates is for the buyer's account."

In its defense, EE Smith maintained that standard industry trade practices made Farmers Grain (as the loading elevator in this case) responsible for sealing loaded cars at origin

before they were released for shipment. According to EE Smith, Farmers Grain bore the risk when failure to seal the cars at origin resulted in their rejection at destination. EE Smith asserted that the contract provision related to increases in freight rates referred to periodic changes in freight rates and fuel surcharges that arise between the date of the contract and shipment, and not, as alleged by Farmers Grain, to charges for freight that follow rejection of a shipment at destination. EE Smith also requested reimbursement for expenses incurred in its defense of this claim.

FGDI similarly asserted that sealing rail hopper cars of corn was a standard trade practice, and, therefore, it was not responsible for notifying Farmers Grain to seal the cars. FGDI asserted that it used the term “freight differential” to identify the charge on the settlement sheet only because no better term was available with its billing software, but that the charge did not relate to the provision in the EE Smith contract as alleged by Farmers Grain. FGDI also sought recovery of its arbitration-related costs, which totaled \$8,570.06. Arguing

THE DECISION

The arbitrators closely reviewed the facts, documents and arguments asserted by the parties in this case. Because neither the contracts nor the NGFA Trade Rules referred to rail car seals, the arbitrators considered industry practices and customs of the trade to apply in this case. It is the arbitrators’ view that it is industry custom to affix seals on the tops and bottoms of rail hopper cars for shipments of grain at origin. In this case, Farmers Grain bore the responsibility to affix the seals but it offered no proof that seals were, in fact, installed.

that it was “only in the middle” of a dispute involving sealing of cars at origin and a receiver’s right of rejection at destination, FGDI also filed its own third-party action bringing Purina Mills into this case. In this action, FGDI sought payment from Purina Mills for the disputed amount of \$14,260.12 on behalf of Farmers Grain. In support of this claim, FGDI alleged that it was not notified by Purina Mills that seals were required, and that there was no evidence of loss, damage or contamination of the corn involved in the shipment.

Purina Mills disputed FGDI’s claimed status as a “middleman,” asserting that Purina Mills had no contract with Farmers Grain. Purina Mills argued that its contract with FGDI was fulfilled when, upon rejection of the five rail cars at issue, FGDI filled the order with replacement cars. Purina Mills also argued that the cars were rightfully rejected in accordance with all applicable laws, rules and industry standards.

THE AWARD

The arbitrators, therefore, denied Farmers Grain’s claims against FGDI and EE Smith, and FGDI’s claims against Purina Mills. The arbitrators also denied FGDI’s claim for \$8,570.06, and EE Smith’s unspecified claim, for arbitration-related costs.

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

Don Seidl, *Chair*
Manager
ADM Grain Co.
Grand Ledge, Mich.

Mark Huston
Director of North American Transportation
Louis Dreyfus Corp.
Kansas City, Mo.

Von Johnson
Purchasing Manager
Prestage Farms
Clinton, N.C.