



National Grain and Feed Association

Arbitration Decision

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January 5, 2006

Arbitration Case Number 2100

Plaintiff: R.F. Cunningham & Company Inc., Smithtown, N.Y.

Defendant: Statesboro Grain LLC, Statesboro, Ga.

Statement of the Case

On June 12, 2003, R.F. Cunningham & Co. Inc. (Cunningham), the plaintiff, entered into a contract for purchase from Statesboro Grain LLC (Statesboro), the defendant, for a total of 100,000 bushels of feed wheat under Palmetto Grain Brokerage (Palmetto) contract confirmation number 32918.

On July 16, 2003, Cunningham entered into a second contract for purchase from Statesboro for a total of 50,000 bushels of feed wheat under Palmetto contract confirmation number 33217.

In this arbitration case, Cunningham made the following allegations:

- ▶ Statesboro applied loaded railcars in too short of a period of time, which resulted in destination backups, demurrage and related costs.
- ▶ Statesboro provided poor-quality wheat that did not meet contract specifications, resulting in further costs related to diverting the railcars to alternate destinations, fumigation and other costs.
- ▶ Official origin grades were not supplied, and the grades that were supplied (submitted sample grades) were not

representative of the wheat loaded in the railcars.

- ▶ Statesboro failed to pay invoices from Cunningham throughout the contract period.

Cunningham claimed a total of \$37,693.33, plus interest, due from Statesboro.

In response to Cunningham's claim, Statesboro asserted the following allegations:

- ▶ The parties agreed to sampling at alternate origin(s).
- ▶ Cunningham was responsible to supply railcars for the loading of feed wheat, and it did not provide empty railcars in a timely fashion.
- ▶ Wheat remained loaded in the railcars for an excessive period of time at both the origin and destination while in Cunningham's care and custody.
- ▶ Cunningham was paid for many of the expenses for which it still claimed it is owed.

Statesboro submitted a counter claim for a total of \$24,489.82, plus interest, due from Cunningham.

The Decision

The arbitrators determined that the NGFA Grain Trade Rules governed the contracts at issue in this arbitration case. Pursuant to NGFA Grain Trade Rule 3 [*Confirmation of Contracts*], the arbitrators also decided that the Palmetto contracts were the controlling contracts for both sales between the parties. The discount schedule attached to the broker's contract was not incorporated by reference on the

face of the contract. However, because neither party refuted this schedule, the arbitrators deemed it incorporated into each contract.

The arbitrators also observed that the contract terms specifically referred to "*First Official Grades – Origin*," but determined that the parties demonstrated a pattern of

accepting the submitted sample grades throughout the shipment period. The arbitrators also concluded that the actions of both parties implied that the buyer would provide empty railcars for the seller to load, even though the broker's contract confirmations did not specifically state "Buyer's Freight." Therefore, the buyer (Cunningham) was responsible for the problems resulting from delinquent shipments and/or congestion of loaded railcars.

The arbitrators further relied upon NGFA Grain Trade Rule 6 [Passing of Title as Well as Risk of Loss and/or Damage], which states, in relevant part, as follows:

"Unless otherwise agreed, title, as well as risk of loss and/or damage, passes to the Buyer as follows: (A) On f.o.b. origin or f.o.b. basing point contracts, at the time and place of shipment. The time of shipment is the moment that the carrier accepts the appropriate shipping document."

Based upon this rule, the arbitrators decided that Statesboro was not responsible for any expenses claimed by Cunningham (infestation, demurrage, handling, etc.) after title to the grain was transferred. The arbitrators also considered NGFA Grain Trade Rule 13 [Condition Guaranteed on Arrival of Rail Cars].

The arbitrators closely considered the potential application of the NGFA Grain Trade Rules and the parties' submissions in this case. However, the arbitrators concluded that they were unable to render a final award to either party because neither party presented a claim that was reasonably clear or complete to allow the arbitrators to properly examine and verify the parties' claims. NGFA Arbitration Rule 6(a) [Procedure for Preparing a Case] specifically states, in relevant part, as follows:

"In preparing either side of a case for submission to the National Arbitration Committee a party will be expected to furnish: (1) A concise and clear statement of all that is claimed. Parties to the arbitration are responsible for

clearly presenting all aspects of their case (the National Secretary and the Arbitration panel are not responsible for undertaking fact-finding searches or discovery)"

In its submissions, Cunningham failed to prove or reasonably demonstrate why it was due the \$37,693.33 claimed. Meanwhile, Statesboro claimed that it was due \$24,489.82, but it too failed to provide the arbitrators with a reasonably clear basis upon which to justify the amount claimed. The arbitrators concluded that both parties failed to provide reasonably clear and concise statements of their claims. Neither party provided documentation sufficient for the arbitrators to verify or refute the claims alleged. Both parties also failed to address adequately each other's claims, or to confirm or challenge the accuracy of those claims. Instead, each side presented statements with little or no factual evidence in support of their allegations. In short, both parties failed to meet their obligation to prove their respective claims.

The Award

For these reasons, the arbitrators denied the claims of both Cunningham and Statesboro in their entirety.

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

Lorraine Idt, Chair
Manager, Contract Execution
Agricore United
Winnipeg, Manitoba, Canada

Randy Christy
Assistant Vice President
Cargill Inc.
Minneapolis, Minn.

Robb Murphy
President
MGM Marketing Inc.
Overland Park, Kan.

Arbitration Appeals Case Number 2100

Appellant: R.F. Cunningham & Company Inc, Smithtown, N.Y.

Appellee: Statesboro Grain LLC, Statesboro, Ga.

Statement of the Case

The Arbitration Appeals Committee individually and collectively reviewed all the evidence submitted in Arbitration Case Number 2100. The Arbitration Appeals Committee also reviewed the findings and conclusions of the original arbitration committee.

The Arbitration Appeals Committee generally agreed with the "Statement of the Case" as presented by the original arbitrators in their decision. The Arbitration Appeals Committee also determined that performance on the contract in this case was beset by inadequate placement of rail cars, substantial quality problems and resulting significant quality discounts, "light" loading of cars, untimely unloading of cars upon arrival at destination, and the seemingly lack of direct communication between the two parties.

The Arbitration Appeals Committee concluded that the NGFA Trade Rules pertinent to this dispute were NGFA Grain Trade Rule 3(c), "*Confirmation of Contracts*" relative to the terms and discount scales applicable, and NGFA Grain Trade Rule 6, "*Passing of Title as Well as Risk of Loss and/or Damage*" relative to which party bore the risk of off-quality grain at destination. Pursuant to the terms of the contract and NGFA Grain Trade Rule 6, the Appellant, R.F. Cunningham & Company Inc., owned the grain, as well as all quality consequences exceeding the official submitted sample grade certificates, when the rail cars were tendered to it.

Even though almost every rail car of wheat had been settled multiple times over a period of months, using the broker's confirmation and subsequent statements, the Arbitration Appeals Committee resettled the cars in question.

The Decision

Basis the application of the agreed-upon discount scales and contract terms, the Arbitration Appeals Committee calculated that the funds still unpaid to the Appellee, Statesboro Grain LLC, were \$9,446.73.

The Award

Accordingly the Arbitration Appeals Committee awarded \$9,446.73 to Statesboro Grain LLC, plus interest from Nov. 7, 2003 at the rate of 6 percent per annum until paid.

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

John L. McClenathan Jr., Chair
Vice President – Grain Group
Archer Daniels Midland Co.
Decatur, Ill.

Art Nor
Grain Manager
Hamilton Farm Bureau Co-op Inc.
Hamilton, Mich.

Steve Colthurst
Procurement Manager
Land O'Lakes Purina Feed LLC
Bellevue, Wash.

Donald W. Wenneker
Manager, Cash Grain
Tate and Lyle Ingredients Americas Inc.
Decatur, Ill.

Chuck Elsea
Senior Vice President
The Scoular Co.
Salina, Kan.