



# National Grain and Feed Association

# Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922  
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: [ngfa@ngfa.org](mailto:ngfa@ngfa.org), Web Site: [www.ngfa.org](http://www.ngfa.org)

April 12, 2006

## Arbitration Case Number 2101

**Plaintiff:** NWT Inc., Vancouver, Wash.  
**Defendant:** R.A. Davis Commodities LLC, Clovis, Calif.

## Arbitration Case Number 2101-B

**Third-Party Plaintiff:** R.A. Davis Commodities LLC, Clovis, Calif.  
**Third-Party Defendant:** Dakota Gold Marketing, Sioux Falls, S.D.

### Statement of the Case

This case involved a rail car of distillers dried grains (car number FWD459700) shipped from Chancellor, S.D., on Aug. 20, 2003 by the third-party defendant, Dakota Gold Marketing (Dakota).

Dakota sold the car to the defendant/third-party plaintiff, R. A. Davis Commodities LLC (Davis). Davis, in turn, sold and shipped the car to the plaintiff, NWT Inc. The Burlington Northern Santa Fe Railway Co. (BNSF) constructively placed the car at destination on Aug. 29, at 23:41 hrs. On Sept. 3, NWT's transloader allegedly discovered the car's contents to be "*rancid smelling and visibly wet.*" NWT notified Davis that the car

was rejected on Sept. 8. In its filings in this case, NWT stated that, "*Circumstances beyond NWT's control prevented notification to Davis until 9/8/2003.*" The car then sat on track until Dec. 18, when it was routed to another destination to be unloaded.

NWT filed this arbitration case against Davis seeking costs related to diversion, unloading and loss of product that totaled approximately \$4,245.75.

Davis filed a third-party claim against Dakota arguing that Davis "*was caught in the middle*" between NWT and Dakota.

### The Decision

The arbitrators determined that NGFA Feed Trade Rule 18 (Condition Guaranteed Upon Arrival) applied to this case. The arbitrators noted that NGFA Feed Trade Rule 18(a) provides that, "*Shipment on contracts shall be guaranteed by the Seller to arrive at final destination, cool, sound and sweet...*" However, the arbitrators decided that NWT, as the buyer in this case, did not adhere to the provision in Feed Trade Rule 18(b), which states: "*It shall be the duty of the Buyer to ascertain by inspection or other means and report the condition of the*

*shipment not later than 12 noon of the second business day after arrival at final destination, otherwise the Seller's liability ceases at the expiration of such time.*" The arbitrators further noted that NGFA Feed Trade Rule 28(d) established that delivery of a rail car occurs upon actual or constructive placement to the buyer.

The arbitrators determined that in this case, the BNSF constructively placed the car on Aug. 29, and NWT did not

report to Davis regarding the condition of the contents of the car until Sept. 8. Therefore, the arbitrators concluded that because NWT failed to provide notification to Davis within the

designated time frame specified in NGFA Feed Trade Rule 18(b), NWT solely was responsible for any and all costs associated with this car.

## **The Award**

Accordingly, the arbitrators denied NWT's claims against Davis. The arbitrators also denied Davis' third-party claims against Dakota.

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

**Frank Heindel, *Chair***

Manager  
The Scoular Co.  
Charleston, S.C.

**Randy Ives**

Vice President  
United Bio Energy Ingredients LLC  
Wichita, Kan.

**Steve Markham**

Commodity Trader  
Commodity Specialists Co.  
Minneapolis, Minn.