



National Grain and Feed Association

Arbitration Decision

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July 6, 2006

Arbitration Case Number 2126

Plaintiff: High Country Mercantile Inc., Cody, Wyo.

Defendant: Dahlgren & Co. Inc., Crookston, Minn.

Statement of the Case

This case involved claims by High Country Mercantile Inc. (HCMI) alleging major discrepancies between origin and destination weights and grades as part of a 1-million-pound purchase of black oil sunflowers from Dahlgren & Co. Inc. (Dahlgren).

HCMI contended that this difference in weights and grades precluded it from completing performance on the contract. HCMI sought buy-in damages of \$15,751.69 and expenses of \$1,037.22 incurred from the load of sunflowers that it rejected—for a total claim of \$16,788.91.

Among the documents submitted by the parties in this case were HCMI's purchase contract number 1944, which provided for destination grades and weights, and Dahlgren's sales contract number 400266, which provided for origin grades and weights. Both contracts were dated Oct. 22, 2004. Dahlgren acknowledged that it received HCMI's contract on Oct. 22. Dahlgren alleged that it then returned HCMI's contract with changes noted, which included deleting the term "destination" and adding the term "origin" with respect to the application of grades and weights. HCMI acknowledged that it received Dahlgren's contract on Nov. 2.

Based upon the information provided by the parties in this case, the arbitrators identified the following key commonalities and differences in the parties' respective documents.

Contract Commonalities:

Quantity: 1 million pounds
Price: \$12.25 per hundredweight
Dockage: 100 percent deductible
(verbal)
Price Basis: F.O.B. – Grace City
Credit Terms: 30 days

Contract Disagreements:

Weights: Origin vs. Destination
Grade: Test Weight
Shipment Period: Carry Start Date

The arbitrators also identified the following timelines and issues presented in the arguments that were submitted by the parties in this case ("*Material/Immaterial*" – refers to the significance of a particular factor to the dispute as determined by the arbitrators):

● From HCMI's first argument:

- 1) Nov. 2, 2004: Acknowledged receipt by HCMI of Dahlgren's Oct. 22, 2004 sales contract number 400266 that provided for "origin" weights and grades. [*Material*]
- 2) Dahlgren contacted HCMI to order all sunflowers for shipment before Dec. 31, 2004, allegedly in contradiction to the contract terms. [*Immaterial*]
- 3) Dec. 20, 2004: HCMI called Dahlgren to discuss application of "destination" weights and grades in contrast to the contract that HCMI received from Dahlgren on Nov. 2. [*Immaterial*]
- 4) Jan. 11, 2005: HCMI partially paid the invoice on the disputed load. [*Material*]
- 5) Dahlgren attempted to cancel the remaining portion of the contract stating that HCMI was outside of the shipping period, which, allegedly, was a position not supported in the contract terms. [*Immaterial*]

● From Dahlgren's responsive argument:

- 1) HCMI made payment on the initial loads according to the terms of Dahlgren's sales contract without formal notation of any grades-related dispute, allegedly implying acceptance of the contract terms. [*Material*]
- 2) Dec. 6, 2004: Dahlgren called to request that all shipping orders be placed prior to Dec. 31. (Storage beginning on Jan. 1, 2005 was available to HCMI under Dahlgren's contract.) [*Immaterial*]

- 3) Feb. 22, 2005: HCMI generated a check for the short pay and later canceled that payment. *[Material]*

- From HCMI's and Dahlgren's rebuttal arguments:

HCMI stated that it first observed during this arbitration process the version of its contract with the crossed-out change of "destination" to "origin." But HCMI acknowledged mailed receipt of Dahlgren's contract that provided for origin grades and weights on Nov. 2. *[Material]*

The Decision

The arbitrators reached the following determinations and observations in their resolution of this case:

- 1) HCMI should not have made payment against the invoices without noting any grade-related protest with the payment.
- 2) HCMI should have corrected and returned the contract it received from Dahlgren that provided for origin grades and weights.
- 3) Dahlgren was in error for demanding a Dec. 31 shipment deadline, and it would have been in breach of contract if it had denied shipping instructions and if HCMI's credit account had been current.
- 4) HCMI should not have short-paid invoices, as that negatively affected credit terms.
- 5) HCMI should have continued to perform on the contract.
- 6) Credit was not an issue, as the contract allowed for additional time (with carry) to place orders.
- 7) HCMI should not have rescinded the short payment, as that kept HCMI outside of the contractual payment terms and signaled acceptance of origin grades.
- 8) While the market price did increase \$2.25 per hundred-weight from Oct 22, 2004 – Jan 7, 2005, HCMI would have been ahead financially by keeping its account current.
- 9) HCMI cannot call for damages if it created the situation that caused the underfill of the contract.

- 10) It is customary to sell origin weights and grades when the contract is f.o.b. and no destination is declared. The quality of the sunflowers was undefined as "field run" FAQ (fair average quality). The benchmark for quality of the sunflower seed that Dahlgren provided to HCMI could be measured only against the average prevailing quality of the harvest crop in that region.

The arbitrators noted that according to HCMI's first argument submitted in this arbitration case, HCMI noticed a 2.9 percent difference between origin and destination dockage on the first load shipped on Oct. 26. The arbitrators also noted that seven days later – on Nov. 2 – HCMI received a copy of Dahlgren's contract in the mail that showed "Origin weights and grades," and HCMI took no action to correct this document. The arbitrators also concluded that HCMI demonstrated acceptance of Dahlgren's terms when HCMI made payment for the first load on Nov. 11 without any notation of protest regarding dockage. The arbitrators further decided that HCMI's claim that credit-related issues caused it to pay the disputed invoices was not supported given that both HCMI's and Dahlgren's contracts allowed for storage at Dahlgren's location (with carry), which would have given HCMI additional time to instruct shipments as credit limits allowed. The arbitrators concluded that HCMI had the contractual right to instruct shipments, but only provided it followed the payment terms expressed in both contracts.

According to NGFA Grain Rule 28 [Failure to Perform], the arbitrators determined that HCMI did not provide proper notice to Dahlgren regarding the claimed nonperformance of the trade and the subsequent election to cancel the remaining contract quantity at fair market value.

The Award

The arbitrators consequently denied High Country Mercantile Inc.'s claim for damages in its entirety.

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

Guy Christensen, *Chair*
Merchandiser
ADM/Northern Sun
Enderlin, N. D.

Jarvis Haugeberg
General Manager
DakotaLand Feeds LLC
Huron, S. D.

Don Woodburn
Director of Marketing
Ag Processing Inc.
Omaha, Neb.