



# National Grain and Feed Association

## Arbitration Decision

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October 12, 2006

### Arbitration Case Number 2132

**Plaintiff:** Jeff Todd, et al., Clarkton, Mo.

**Defendant:** Bunge North America Inc., St. Louis, Mo.

#### Statement of the Case

The plaintiffs, Jeff Todd, Treasure Todd, Ruth Mills and Carol Mills, collectively, filed this arbitration case for \$5,000 in damages against the defendant, Bunge North America Inc. ("Bunge").

On Dec. 15, 2004, the plaintiffs entered into two basis contracts for the sale to Bunge of 13,998.93 bushels of soybeans (purchase confirmation number 104358) and 1,069.27 bushels of soybeans (purchase confirmation number 104359). Both contracts provided "\$.2200 03/05" as the "Price" term, and "Dlvd Linda-Bunge Nor" as the "Basis" term. The arbitrators noted that both contracts also provided that the soybeans, "[m]ust be priced or will be rolled during market hours by 2/25/05."

On Feb. 24, 2005, the manager of Bunge's elevator located in Linda, Mo., called the elevator's customers who had soybean basis contracts with March 2005 futures pricing to determine whether they wished to price those contracts, wait another day, or roll the contracts. At approximately 9:40 a.m. on Feb. 24, Bunge said the elevator manager called Mr. Todd to discuss how the basis contract pricing procedures worked and the alternatives of pricing the contracts and rolling the futures.

In their initial argument filed in this case, the plaintiffs alleged that during this Feb. 24 conversation, Mr. Todd stated

that, "\$6.00 with storage and everything held out was my magic number. If you can write me a check for 6.04/per bu., do it."

In its responsive argument, Bunge alleged that during this conversation, its elevator manager explained the following: 1) company procedures required that he turn in the pricing order to Bunge's trade room, which, in turn, would place an order with the Chicago Board of Trade to execute the pricing order; 2) a pricing order filled at the exact time of the conversation would result in a contract price of \$6.06 per bushel (representing the March futures price of \$5.84, plus the contract basis of 22-cents); 3) the \$6.06 price was expressly subject to the pricing order being filled at \$5.84; 4) if Mr. Todd requested an "at the market" pricing order, the actual futures price he received may be higher or lower depending upon the direction of the futures market; and 5) an order to price at \$5.84 may or may not fill, depending upon the direction of the market. Bunge alleged that Mr. Todd then instructed the elevator manager to "sell them," and when asked "With an 'at the market' pricing order?" Mr. Todd confirmed, "Yes, sell them."

The plaintiffs did not submit a rebuttal argument in this case, nor did Bunge file additional arguments.

#### The Decision

The arbitrators determined that the relevant facts in this case were clear and concise. The arbitrators concluded that Bunge's elevator manager appropriately informed the plaintiffs of the proper contracting options and trade terminology as practiced in the grain industry. The arbitrators further decided that the trade order was called into Bunge and the trade was executed within acceptable industry trading practices.

The arbitrators identified the following as the central issue in this case: Was the order to sell a "limit order" or a "market order?"

The arbitrators noted the plaintiffs' claim for a price of \$6 per bushel "with storage and everything held out." The arbitrators determined that it is not common practice during pricing discussions in the industry to state a price that incor-

porates discounts and storage. It is understood in the trade that the price of grain when established is less discounts and storage whether on a spot order, basis contract or a flat price contract. The arbitrators determined that the plaintiffs did not provide detail or documentation regarding their claimed damages. The arbitrators also observed that documentation provided by Bunge supported the detailed conversations with Mr. Todd regarding “*limit orders*” and “*market orders.*”

The arbitrators concluded that the sell order given was an “*at-the-market*” order, and ruled in favor of Bunge. The arbitrators’ decision also was based upon common grain trade terminology, practices and procedures. The arbitrators further determined that according to NGFA Grain Trade Rule 6 [*Passing of Title as Well as Risk of Loss and/or Damage*], the risk of loss passed to the seller at the time a “*market order,*” was placed, and title passed to the buyer at time of execution.

## The Award

The plaintiffs’ claim was denied; no damages were awarded.

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

**Steve M. Sturm**, *Chair*  
All-American Co-op  
Stewartville, Minn.

**William L. Blount**  
Eastern Grain, LLC  
Bethel, N.C.

**Scott Docherty**  
Topflight Grain Co-op  
Bement, Ill.