



National Grain and Feed Association

Arbitration Decision

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February 26, 2009

Arbitration Case Number 2197

Plaintiff: West Plains Co., Windsor, Colo.

Defendant: Front Range Energy LLC, Windsor, Colo.

Statement of the Case

This case involved a dispute over the quantity of U.S. No. 2 yellow corn intended to be shipped under an August 2006 purchase-and-sale contract between the buyer, West Plains Co. (West Plains), and the seller, Front Range Energy LLC (Front Range).

The conditions under which the parties entered into the contract included that, at the time, 75-car shuttle trains were delivering corn to Front Range's storage facilities more rapidly than Front Range expected. Front Range anticipated having insufficient storage space to accommodate a new corn shipment scheduled to arrive on Aug. 12, 2006. Front Range consequently decided to sell some corn in its facility to accommodate the expected Aug. 12 delivery. A Front Range representative then contacted a West Plains representative to discuss the contract terms. They agreed that the corn would ship

from Front Range's facility within the specified three-day period, Aug. 9-12, 2006.

At issue in this case was the quantity of corn to be shipped under the contract. The contract terms provided for 75,000 bushels at \$2.5775 per bushel. However, Front Range argued that the "actual trade was for an undetermined amount of bushels not to exceed 75,000 bushels." According to Front Range, the terms contained in the written contract were simply to accommodate the parties' use of "standard contract forms" that were "the only programs tied into the accounting portion of [their] companies." Front Range stated that "[t]here was no reason to dispute [the contract terms] because everyone knew the agreement. The 75,000 bushels created the maximum to be shipped, not the minimum, it contended." In the end, 45,755 bushels of corn were shipped under the contract.

The Decision

After reviewing the evidence presented, the arbitrators identified the following issues requiring determination:

- ◆ Was there a valid contract for 75,000 bushels?
- ◆ If a valid contract was in place, on what date was notification of default made?
- ◆ What, if any, damages were incurred?

The arbitrators referred to Front Range contract of sale number F0000003 (provided by Front Range as article 4 in its response to first argument). The sale confirmation was issued by Front Range to West Plains on Aug. 8, 2006. The arbitrators noted that this confirmation provided for "75,000 BU" of corn at \$2.5775 per bushel for shipment Aug. 1-15, 2006, and that the confirmation was signed by a representative of Front Range.

The arbitrators also referred to West Plains' confirmation of pricing and/or contract amendment for purchase contract number 1887 (provided by Front Range as article 3 in its response to first argument). The pricing confirmation was issued by West Plains to Front Range on Aug. 10, 2006. The arbitrators noted that the confirmation was signed by a representative of West Plains and that, again, this confirmation provided for "75,000.000 BU" at \$2.5775 per bushel.

The arbitrators understood Front Range's position to be that the quantity term of 75,000 bushels was intended to be "the maximum, not the minimum." However, based upon the exact and unambiguous terms of the various contract documents provided by the parties, including the above-cited sales and pricing confirmations (articles 3 and 4 submitted by Front Range with its arguments in this case), the arbitrators determined that a valid contract for 75,000

bushels of corn existed. However, only 45,754.64 bushels of corn were shipped under the contract, leaving a balance of 29,245.36 bushels.

The second issue confronting the arbitrators was determining when notification of contract default actually occurred. The arbitrators reviewed documentation provided by West Plains indicating that the contract shipment period was extended on two occasions, and that confirmations of the extensions were mailed to Front Range. The shipment period first was extended on Nov. 20, 2006, from First Half August 2006 to Nov. 20-Dec. 31, 2006 (Exhibit Q, West Plains Rebuttal Argument). On April 30, 2007, the delivery period was extended again to Sept. 30, 2007 (Exhibit R, West Plains Rebuttal Argument). Neither confirmation of extension was disputed by Front Range, nor returned to or signed by West Plains. Front Range disputed whether the confirmations were indeed sent to it. Nonetheless, the parties exchanged various correspondences between Nov. 30 and Dec. 11, 2007, attempting to resolve the issue of the unshipped corn under the contracts. But the parties did not reach a mutually agreeable solution to the dispute.

The arbitrators determined that the letter dated Nov. 30, 2007,

from West Plains to Front Range (Exhibit D, West Plains First Argument) provided notification that the contract was being canceled pursuant to a telephone call between the two parties on Nov. 29, 2007. Based upon the Nov. 30 correspondence confirming the Nov. 29 telephone conversation, the arbitrators determined that Nov. 29, 2007 was the cancellation date of the contract.

The final issue addressed by the arbitrators was the determination of damages incurred by the parties resulting from non-completion of the contract. The arbitrators determined that the December 2007 futures price was established at \$3.835 on Nov. 28, 2007. Exhibits M and N of West Plains' first argument demonstrated brokers providing values to be +0.28 bid to +0.35 offered. The arbitrators concluded that the bid price should be used because the original trade was done for quick shipment.

◆ \$3.835/bu. + \$0.28 bid price =	\$4.115
◆ Original contract price:	\$2.573/4
◆ Difference in value:	\$1.5375

◆ \$1.5375 (x) 29,245 unshipped bushels = \$44,964.19

The Award

The arbitrators determined that Front Range owed West Plains \$44,964.19 in damages. Each party was ordered to pay its own arbitration and attorney fees.

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

Don Seidl, Chair
Grain Manager
Vera Sun Energy
Lake Odessa, Mich.

James Banachowski
Director of Commodity Trading
The Andersons Inc.
Maumee, Ohio

Gary Beachner
General Manager
Beachner Grain Inc.
St. Paul, Kan.