



National Grain and Feed Association Arbitration Decision

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January 24, 2024

CASE NUMBER 2935

**PLAINTIFF: RIVER VALLEY COOPERATIVE
ELDRIDGE, IA**

**DEFENDANT: DAVID WALTON
WILTON, IA**

STATEMENT OF THE CASE

Two contracts, dated from 2020, are in dispute between these parties. Both contracts call for the sale and delivery of grain by David Walton of Wilton, IA to River Valley Cooperative (RVC) of Eldridge, IA. Both contracts were entered into and acknowledged by Mr. Walton. The dispute involves failure to deliver enough grain to satisfy completion of these contracts.

Contract 148859

The first contract (number 148859) was entered into by both parties on August 25, 2020. Mr. Walton acknowledged this contract by signing it on August 29, 2020. This contract provided for the delivery of 5,000 bushels of corn on RVC's account to a third-party's river terminal facility in Davenport, IA, with delivery dates of August 5 to September 2, 2020, and a price of \$3.60 per bushel.

Two loads were delivered against contract 148859 for a total of 2,289.29 bushels applied on the 5,000-bushel contract. On September 21, 2020, RVC inquired with Mr. Walton about the balance of the contracted bushels owed under the contract. Mr. Walton stated he had already delivered the corn.

On November 20, 2020, RVC spoke with Mr. Walton again, and RVC learned that Walton had delivered the remaining 2,701.71 bushels to the facility but for the account of a different grain buyer, which had already paid Walton directly for this corn. Mr. Walton stated he would arrange with the other buyer to reverse the transaction and have it settled correctly to RVC's account. On January 25, 2021, as the transaction had not been corrected by Walton or the third-party grain buyer, RVC gave Walton until March 31, 2021, to deliver the remaining corn. Mr. Walton agreed and stated he had extra corn and trucks and would deliver the corn to complete the contract.

On March 31, 2021, still as no corn had been delivered under this contract, RVC notified Mr. Walton he was in default. RVC applied a cancellation price from the close of business that day of \$5.78 per bushel, which given the contract price of \$3.60, resulting in a calculated loss of \$5,909.35 for the 2,701.71 bushels remaining under the contract.

Contract 148860

The second contract (number 148860) was entered into by both parties on August 25, 2020. Mr. Walton acknowledged this contract by signing it on August 29, 2020. This contract provided for the delivery of 5,000 bushels of soybeans on RVC's account to another third-party's river terminal facility in Buffalo, IA, with delivery dates of October 1 to October 31, 2020, and a price of \$9.00 per bushel.

No soybeans were delivered during the delivery period on account of RVC. On December 5, 2020, RVC inquired with Mr. Walton, who stated he was paid directly by the third-party grain buyer and would have the transaction reversed. On January 25, 2021, as the settlement still had not been reversed, RVC inquired again with Mr. Walton, who provided further assurances that the matter would be resolved. On March 2, 2021, Mr. Walton informed RVC that the other grain buyer was to invoice Mr. Walton for the proceeds of that sale, which Mr. Walton would pay, and then the other buyer would resettle the transaction and send payment to RVC for the soybeans.

On March 11, 2021, as still no action had occurred reversing the settlement, RVC notified Mr. Walton he was in default. RVC relied upon the market cash price on the close of March 12, 2021, of \$13.94 per bushel, which when compared to the contract price of \$9.00, resulted in calculated losses for RVC in the amount of \$24,700.

Mr. Walton's main arguments presented in this case are as follows:

1. Walton did make some attempts to deliver corn and soybeans to both of these facilities.
2. Walton's drivers properly notified the terminal location that the loads were supposed to be on account of RVC.
3. Regarding the corn contract, the third-party facility's unloading shipment reports that identified the other grain buyer as the supplier were contrary to Walton's instructions and absent of any fault or misrepresentation attributable to Walton.
4. Walton was unaware of the incorrect settlement for the soybean contract until November 18, 2020.
5. Walton contacted both river terminals and third parties involved but could not persuade them to reverse the settlements.
6. The cancellation price claimed for the soybean contract is incorrect because Walton informed RVC he was out of soybeans on November 18, 2020.

THE DECISION

Both of these contracts involve very similar situations. In both cases, the plaintiff and the defendant entered into a mutually agreed upon contract. In both situations, the defendant failed to deliver upon said contracts pursuant to the agreed upon terms.

Although Mr. Walton did make some attempts to haul grain to the terminal facilities, he did not haul grain on account of RVC. Mr. Walton argues this was not his fault because he instructed the facilities to apply the grain on account for RVC. However, in both situations, delivery tickets would have been printed out and provided to the trucker for each load that would have visibly identified the shipper to whose account the grain would be applied. Thus, Walton's drivers would have known or had to reason to know when they left the facility whether the tickets were correct. If they were unaware the tickets were incorrect, it is because they did not review them. At all grain facilities, it is the responsibility of the driver/customer to notify the facility immediately of an incorrect shipper name on the ticket. This was not done in regard to this dispute.

In addition, Mr. Walton was paid for grain by the wrong company from both facilities. He apparently was not aware of this until he was notified by RVC. Although Walton states he tried to contact the parties involved and have them reverse and correct the settlements, the amount of time that passed without any resolution would indicate any such conversations and attempts were minimal at most.

Mr. Walton also had a chance to haul corn to fulfill the contract in March of 2021, but failed to do so.

Mr. Walton provided assurances to RVC he would correct the settlement of the soybean contract. These assurances dragged on through March of 2021, until finally RVC received confirmation from the other buyer that it would not resettle on the soybeans.

The arbitrators conclude although Mr. Walton may not have had intentions of selling grain on account of any party other than RVC, the lack of thoroughness and diligence in review of delivery tickets for which he was responsible and the poor recordkeeping on settlements were of no fault of RVC. Mr. Walton had opportunity to correct the tickets at the facilities and, again, when he received the settlement checks had he made a concerted effort to do so.

The arbitrators consequently award damages to RVC for both contracts as follows:

Regarding the corn contract, RVC used an incorrect cancellation price date. RVC notified Walton of his default on March 31, 2021. Pursuant to NGFA Grain Trade Rule 28(A), the cancellation price should have been from the following business day, April 1, 2021. The price this day was \$5.74. RVC's original settlement request was \$5,909.35. After the correction in price, the corrected settlement for this contract is \$5,800.92.

Regarding the soybean contract, the arbitrators agree that the March 12, 2001-cancellation price applied in this case based upon the March 11 notification by RVC that Walton was in default. Until then, the parties were communicating toward meeting the obligations under the contract. The cancellation of this contract results in damages to be paid to RVC in the amount of \$24,700.

THE AWARD

The arbitrators award to River Valley Cooperative in the total amount of \$30,500.82 (\$5,800.92 for contract 148859 and \$24,700 for contract 148860). The basis for these calculations of damages is provided above. The arbitrators also award interest of 3.25% in accordance with NGFA Arbitration Rule 6(F). Interest shall accrue from October 21, 2021, the date this case was filed.

Decided: August 29, 2023

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Doug Cropp, *Chair*
Grain Merchandiser
Premier Cooperative, Inc.
Champaign, IL

Jim Fagerholt
Director of Trading and Risk Management
MarKit County Grain LLC
Argyle, MN

Will Weathers
Senior Vice President
Farmers Grain Terminal, Inc.
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