



# National Grain and Feed Association Arbitration Decision

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1400 Crystal Drive, Suite 260  
Arlington, VA 22202

P: (202) 289-0873  
F: (202) 289-5388

May 23, 2018

## CASE NUMBER 2785

**PLAINTIFF: LANSING CANADA ULC  
HAMILTON, ONTARIO, CANADA**

**DEFENDANT: TREVOR WINNY FARMS LTD.  
SOVEREIGN, SASKATCHEWAN, CANADA**

### STATEMENT OF THE CASE

In this dispute, the plaintiff, Lansing Canada ULC (Lansing), claimed that the defendant, Trevor Winny Farms Ltd. (Winny Farms), failed to complete delivery against contract number 4562, and was, therefore, in default and owed damages to Lansing. Winny Farms presented a counterclaim for damages claiming that Lansing wrongfully applied a separate *spot* delivery against contract 4562.

The contract in dispute contained the following terms:

Contract number: 4562  
Buyer: Lansing Canada ULC  
Seller: Trevor Winny Farms Ltd  
Contract date: February 20, 2014  
Delivery period: October 1 - November 30, 2014  
Price: \$6.20 per bushel (Canadian dollars)  
Quantity: 33,000 bushels  
Commodity and Grade: No. 2 Canadian Western Amber Durum (CWAD) Wheat  
Del. Basis/FOB Point: Track Origin  
Title Passes: Rosetown, Saskatchewan

The arbitrators identified the following sequence of events as most pertinent to this dispute:

- February 20, 2014 – the original contract date.
- October 1 - November 30, 2014 – the original shipment period. However, constraints in railcar availability prevented the parties from executing the contract during the original delivery period.
- April 2015 – Winny Farms delivered 14,208 bushels of wheat that was outside of the specifications for contract 4562. Lansing argues that this action implied consent on the part of Winny Farms to extend the delivery period under contract 4562 and to amend the contract terms from rail to truck delivery. Winny Farms argues that the 14,208-bushel delivery was for a separate spot contract and that it never agreed to amend the delivery terms or extend the delivery period for contract 4562.

- April 2015 - February 2016 – No further communications occurred between Lansing and Winny Farms during this period. Lansing claims it attempted to contact Winny Farms. Winny Farms denies any contact from Lansing occurred.
- February 26 - March 1, 2016 – Lansing and Winny Farms communicate by telephone and email. Trevor Winny makes it clear that he has no intention of completing delivery under contract 4562, and Lansing cancels the balance of the contract.
- March 1, 2016 – the contract is “bought in” by Lansing.

The main arguments by Lansing in this case are as follows:

- Lansing asserts that both parties agreed to extend the delivery period and to amend the method of delivery from track origin to truck.
- Lansing asserts that after it informed Winny Farms of discounts applied to the delivery of 14,208 bushels, Winny Farms then refused to load additional trucks and ended further communications with Lansing.
- Lansing disputes Winny Farm’s counterclaim for the 14,208 bushels. Lansing denies that any discussions took place whereby the parties would have agreed to the separate transaction claimed by Winny Farms. Lansing argues it would have made no sense for one of its merchants to commit to accepting off-grade wheat from Winny Farms without a discount.
- Lansing claims it attempted to contact Winny Farms several times between April 2015 and February 2016.
- Lansing argues it cancelled the contract in March of 2016, when it reestablished contact with Winny Farms, which then made it clear that Winny Farms had no intentions of fulfilling the contract. Lansing claims a market loss of 43,219.55 CAD (for the undelivered bushels at 2.30-per bushel, which represents the difference between the contract and market prices).

The main arguments by Winny Farms in this case are as follows:

- Winny Farms denies ever agreeing to an extension of the contract delivery period or to an amendment of the delivery method from rail to trucks. Moreover, Winny Farms asserts that Lansing cannot establish a specific date on which it alleges the parties would have rolled the contract, and Lansing has not provided any written confirmation of any amendments to the contract.
- Winny Farms asserts that the 14,208 bushels of wheat delivered was part of a separate spot contract whereby grade 5 wheat could be delivered without being discounted.
- Winny Farms points out that the date chosen by Lansing to fix its alleged cancellation damages was a full year from the allegedly amended delivery period.
- Winny Farms disputes Lansing’s calculation of damages.

<b>THE DECISION</b>
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The arbitrators concluded as follows;

- Contract 4562 was affirmed to be a valid contract by both parties.

- Timely performance under contract 4562 was not possible because of a shortage of rail cars during October and November 2014.
- There was disagreement whether the parties expressly consented to an extension of the contract and its underlying obligations in accordance with NGFA Grain Trade Rule 4. Lansing argued that Winny Farms consented to extending contract 4562 when it delivered the 14,208 bushels in April 2015. Winny Farms countered that the delivery of the 14,208 bushels was against a new spot contract and that the original contract 4562 was no longer valid.
- Regardless of whether an agreement was reached to extend the shipment timeframe for contract 4562, the fact that it took nearly a year for Lansing to make a determination that Winny Farms was not going to be delivering more wheat against the contract is not consistent with Lansing’s obligation to exercise due diligence under NGFA Grain Trade Rule 28.
- Furthermore, Lansing failed to provide evidence to substantiate its alleged attempts to contact Winny Farms about delivering wheat between April 2015 and February 2016.
- For these reasons, an award for claims by Lansing for monetary damages was not warranted.
- Winny Farms provided no evidence to support its counterclaim that Lansing agreed to accept wheat of the quality shipped by Winny Farms without a discount.

Therefore, an award for monetary compensation to Winny Farms was not warranted.

<b>THE AWARD</b>
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No damages are awarded in this case to either party.

Decided: April 9, 2018

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

**Kevin Hachler**, *Chair*  
 Manager of Commodity Purchasing  
 Ingredion Canada Corporation  
 London, Ontario, Canada

**Matt Ashton**  
 Senior Vice President - Grain  
 Central Valley Ag Cooperative  
 York, NE

**Travis Traut**  
 General Manager  
 Country Grain Cooperative  
 Eldridge, ND