



May 16, 2019

## CASE NUMBER 2799

**PLAINTIFF: BURES FARMS  
GANADO, TX**

**DEFENDANT: THE ANDERSONS, INC.  
LYTLE, TX**

### STATEMENT OF THE CASE

In this dispute, the plaintiff, Bures Farms (“Bures”), claimed the defendant, The Andersons, Inc. (“Andersons”), wrongfully terminated the balance of two corn contracts. Bures claimed it consequently was owed damages for the cancellation of the contracts and additional storage costs. Andersons presented a counterclaim for damages in this dispute, claiming that Bures owed replacement costs and a cancellation charge of 10-cents per bushel on the undelivered bushels under the contracts as well as attorney fees, collections costs and interest.

The two contracts in dispute (contract numbers BA00053 and BA00054) each provided for the delivery of 250,000 bushels of White Food Corn. Both contracts were signed by the parties and dated April 14, 2015.

Contract BA00053 states the shipment date under the contract was April 14, 2015. Both parties submitted in this case that this was a typographical error and that the correct and intended shipment terms for this contract was for delivery to occur through April 14 of 2016, not 2015. Contract BA00053 was a basis contract with the basis set at +1.00. The contract did not provide a basis month, but the contract stated, “NEEDS TO BE PRICED BEFORE DECEMBER GOES OFF THE BOARD”. The contract also stated, “FOB GRAIN BINS”. 75,000 bushels under this contract were priced on June 29, 2015, and another 150,000 bushels were priced on June 30, 2015, leaving a balance of 25,000 bushels unpriced under this contract.

Contract BA00054 provided for shipment February 1 through April 30, 2016. This was a basis contract with the basis set at +1.25. Again, no basis month was provided, but the contract stated, “NEEDS TO BE PRICED BEFORE DECEMBER GOES OFF THE BOARD”. The contract also stated, “FOB FARM BIN”. No futures prices were established, leaving a balance of 250,000 unpriced bushels under this contract.

The arguments presented by Bures in this case included as follows:

- Andersons entered into the contracts due to a potential scarcity of White Corn. However, after the weather changed and production increased, the market turned against Andersons, and it set out to create an excuse to avoid its obligations under these contracts.

- Andersons did not attempt to extend the contracts and its cancellation of the contracts was untimely because it was well after the delivery period specified.
- Andersons did not provide timely notice of any alleged quality-related issues with the grain or of its decision to refuse further deliveries of grain.
- The claims by Andersons that Bures failed to deliver food grade corn are not properly supported pursuant to NGFA Trade Rule 13.
- The unpriced balances should have been priced by Andersons on the closing date for December 2015 Futures (November 30, 2015). Damages for the unpriced and unshipped balances should be calculated accordingly.

The arguments presented by Andersons in this case included as follows:

- During the term of the contracts, Bures failed to price the outstanding unpriced balances, which totaled 275,000 bushels.
- Andersons attempted to use the delivered corn to fulfill Bures' contractual obligations by receiving and blending the low-quality corn with higher-quality inventories despite that the delivered corn did not meet the contract specifications.
- All deliveries by Bures were weighed, graded and recorded on ticket receipts in accordance with Andersons' standard practice and pursuant to NGFA Grain Trade Rule 12(B).
- Bures was aware of the off-quality grain through numerous telephone calls with Andersons employees and the tickets provided upon delivery of the grain to Andersons.
- Further awareness by Bures of the poor quality of the grain was evident when Bures requested assistance from Andersons with selling the corn to other buyers who would accept feed grade corn.
- Andersons informed Bures that it would cancel the contracts due to the poor quality, but Bures did not want to lose the higher value of the priced contracts. In response, the Andersons did not immediately cancel the contracts with Bures but rather worked with Mr. Bures to help sell the grain as feed grade corn. The Andersons, with Bures' consent, sold 90,000 bushels of the grain as feed corn to another cooperative.
- With Bures still unable to deliver Food Grade White Corn, The Andersons sourced the 310,000 bushels it was owed from Nebraska. Bures informed Andersons that it had retained counsel and at that time it became "a legal matter." Andersons subsequently cancelled the contracts on June 30, 2016.
- Andersons also presented in its counter claim that Bures was responsible for 1) the difference between the contract price and the cost of replacement grain (including freight) totaling \$22,014 (contract price difference of \$1.15 x 7,966 bushels = \$9,160.90; \$12,186 for rail freight; \$667 for truck freight); 2) a 10-cents per bushel cancellation charge under paragraph 9 of the contracts totaling another \$30,994.23; and 3) attorney fees, cost of collection, arbitration fees and interest.

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

- On September 15, 2015, delivery of the corn from Bures began.
- In September and October 2015, Andersons accepted delivery of corn that did not meet contract quality specifications believing it would be able to blend it with other grain to meet quality specifications.

- During October 2015 through February 2016, numerous calls occurred from representatives of Andersons to Mr. Heath Bures according to logs produced in this case. These logs also indicate calls from Mr. Bures to representatives of Andersons. The records indicate these calls involved discussions regarding the poor quality of the grain delivered.
- The January 5, 2016 entry from the daily truck unload logs produced by Andersons indicated the loads from Bures as “Fumonisin High”, “Trk Load Rejected” and “Said to unload all Trks”.
- The February 17, 2016 entry from the daily truck unload logs states, “Stop hauling from Bures”.
- Text messages presented in this case from April 13, 2016 through May 31, 2016, demonstrate efforts by Andersons to sell-out the low-quality grain on behalf of Bures, including discussions of which buyers would accept it and destinations where it could be delivered. These also reflect the values that would be sold for the account of Bures.
- Specifically, an exchange of text messages on May 31, 2016, demonstrated the discussions with Bures regarding values of the corn.

Bures: *“Mine and my families thoughts are we contracted 500,000 bushels of grain to the Andersons, sent samples, shipped 100,000 bushels, then told when we have no outlets we don’t want your corn. We can eat a little but this is not right”.*

Andersons: *“The problem was the quality ... They [Andersons staff] continued to bring some in hoping they could blend it off with our better inventory to make it work. They said they tried different bins as the next one should be better”.*

Bures: *“Just keep moving anything u can an if there is any more help u can do it would be greatly appreciated. Thanks”.*

Andersons: *“I know the value is not good and will do what I can! Thanks”.*

Bures: *“Appreciate it”.*

From May 25 through June 10, 2016, Andersons assisted Bures in selling out 90,000 bushels of the corn to another buyer.

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| <b>THE DECISION</b> |
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The circumstances leading to this dispute were plagued by poor contract management from the very beginning. The contracts were unclear on what futures contracts months to apply the basis. One of the contracts also had an incorrect delivery date. If these contracts were written basis the December 2015 futures contract, efforts should have been made to price the contract balances or to roll them according to futures spreads prior to the expiration of the December futures contract. This did not occur. Additionally, once the delivery periods had passed, with balances remaining on the contracts, agreement on terms should have been reached to extend or terminate the contracts.

Bures also argues that damages should be based on the December futures price on November 30, 2015. However, Bures never attempted to price the unpriced balances on that date. Once the inability to deliver Food Grade White Corn was certain, Bures asked for the balances to be priced. Andersons declined due to Bures inability to deliver. To retrospectively base the claim on that futures contract date is opportunistic and not a normal trading practice.

Bures' claim of not being informed of poor quality is proven false by the numerous grades returned to Bures on each delivery ticket, numerous calls and texts and their own admission that they needed assistance to sell out the off-grade corn. Andersons operated according to NGFA Trade Rule 12(B). Bures' claim that termination of the contracts should be denied because it occurred two months after the shipment date is also denied. Evidence produced in this case, including the text message exchange on May 31, 2016, demonstrates Bures' acceptance of continuing beyond the delivery periods stated in the contracts.

The arbitrators unanimously decided this case in favor of Andersons and denied the claims by Bures.

The arbitrators further ruled in favor of Andersons's counter-claim and awarded as follows:

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|-------------------------|--------------------|
| Cancellation fee        | \$30,994.23        |
| Replacement costs       | \$22,014.00        |
| <u>Arbitration Fees</u> | <u>\$ 8,610.00</u> |
| Total Award             | \$61,618.23        |

Interest shall accrue on the award at a rate of 3.5 percent per annum pursuant to NGFA Arbitration Rule 6(F) from the date of this decision until the award is paid in full.

The arbitrators denied Andersons' request for attorney fees and other collection costs.

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| <b>THE AWARD</b> |
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The arbitrators awarded \$61,618.23 in damages to The Andersons, Inc. from Bures Farms.

Decided: April 18, 2019

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

**Tom Bright**, *Chair*  
Director of Grain Merchandising  
Agtegra Cooperative  
Aberdeen, SD

**Kevin Peach**  
General Manager  
Farmers Elevator Company of Honeyford  
Honeyford, ND

**Tom Russell**  
Area Manager  
Bunge North America Inc.  
Jonesville, LA