



March 24, 2020

CASE NUMBER 2818

**PLAINTIFF: BTR FARMERS COOPERATIVE
LEEDS, ND**

**DEFENDANT: AGREX, INC.
PLYMOUTH, MN**

STATEMENT OF THE CASE

In December 2016, Agrex, Inc. (“Agrex”) agreed to purchase from BTR Farmers Cooperative (“BTR”) a 440,000-bushel unit train of corn (Confirmation of Purchase Contract 30176). The contract provided for delivery Feb. 10 – 25, 2017, to the Pacific Northwest with first official grades to govern. Pricing of the contract was subsequently set at \$4.46 per bushel.

BTR claims Agrex breached the contract when it attempted to reject the train in an improper and untimely manner, and then unilaterally applied discounts and withheld payment from BTR for full settlement value of the contracted grain. According to BTR, the grain inspection service generated and provided origin grades for the train to Agrex at 8:27 AM on Feb. 23, and Agrex did not provide notice of its intent to reject the train until 5:37 PM that day. BTR states that Agrex’s notice was untimely and insufficient because it allegedly was required before 5:00 PM under NGFA Grain Trade Rule 12(A)(2).

BTR claims Agrex then unilaterally discounted the contract price for a total reduction of \$118,761.40. BTR denies it agreed to this discount, stating Agrex exerted pressure on BTR to accept the discount to unload the train and avoid further railroad charges. BTR also claims that because of actions by Agrex to hold the train at BTR’s facility, it incurred a reduction in payment received from the rail carrier under an *Origin Efficiency Program* in the amount of \$5,700.

In its defense, Agrex claims the parties agreed upon the discounted price on Feb. 24, and then signed a settlement with respect to this transaction that fully resolves this dispute (Pricing Confirmation Purchase Contract 30176-002). Agrex denies it exercised any undue pressure on BTR to agree to the discount. Agrex also denies it attempted to have the railroad hold the train at BTR’s facility, stating it did not have standing to do so since the freight did not belong to Agrex.

Agrex claims it was justified in rejecting the train. Agrex refers to specific terms in the contract:

GUARANTEED COOL & SWEET ARRIVAL, SUBJ TO ACCEPTANCE AT DEST
#2YC BNSF SHUTTLE, 14.5 MST AGV,
#3YC APPLICABLE ON BCFM W/INDIVIDUAL
CAR DISCOUNTS TO APPLY, DEST UNLOAD
BCFM SCALE: ADDITIONAL .05 CENTS OVER
4.0 TO 5.0, ADDITIONAL .06 CENTS OVER 5
TO 6, CORN BORER CERT REQUIRED

Agrex claims it had the right to reject the train at issue given the grades from the inspection agency indicated #4 yellow corn with 17 cars at 6% BCFM or higher. Also, according to Agrex, the parties communicated extensively by telephone and email, including on the evening of Feb. 23, demonstrating

that BTR was fully aware of issues with the nonconforming train, including that Agrex would not accept the train, and that the parties were working to find a solution. Agrex argues the discounts applied and accepted by BTR were simply Agrex passing along the best option it could find from a buyer for the off-grade grain “as is” in the marketplace on that date. Agrex further claims BTR failed to comply with Grain Trade Rule 12(A)(2) because it did not provide notice it wished to apply the grain that was not in accordance with contract specifications. Agrex argues notification of the grades from the inspection agency was not sufficient to convey any intent to apply the nonconforming corn.

BTR seeks damages in the amount of \$124,461.40 (\$118,761.40 for the applied discount and \$5,700 for the reduction of the Origin Efficiency Program payment) plus interest, attorney’s fees and costs. Agrex seeks \$1,800 for reimbursement of arbitration fees as well as attorney fees and costs.

THE DECISION

The arbitrators discussed and closely considered all the facts, arguments and documents submitted by BTR and Agrex in this case. The arbitrators noted that evidence of extensive communications between the parties was produced, including transcripts of numerous telephone conversations between merchandisers for BTR and Agrex. Among the documents relied upon by the arbitrators in their decision was Pricing Confirmation Purchase Contract 30176-002. This confirmation contract provided for pricing of the original purchase at \$4.06-per bushel. Agrex signed it on Feb. 28, 2017; BTR signed it on March 6, 2017. BTR claims that the discount applied was unilaterally taken by Agrex and resulted in an "excess discount" of approximately 27-cents-per bushel. However, the arbitrators concluded there was insufficient, if any, evidence of undue coercion by Agrex. To the contrary, the transcripts of telephone calls between BTR and Agrex demonstrate that the parties were working on alternatives, which ultimately resulted in the settlement reached. Therefore, the arbitrators decided that contract 30176-002 was valid, and the train was properly discounted as set forth in the settlement terms in that pricing confirmation contract.

BTR seeks to circumvent the settlement by retroactively claiming that Agrex was late to provide notice of the disposition of the trainload. The arbitrators noted that the transcripts showed that given what BTR knew in advance about the condition of the trainload, it could not have met the specifications in the original purchase contract. The original contract already allowed for elevated foreign material levels, which the trainload could not meet. The arbitrators concluded that BTR may not subsequently negate the terms of the settlement confirmation by retroactively claiming it had late notice regarding the condition and disposition of the trainload.

With respect to Agrex’s request for reimbursement of \$1,800 for arbitration-related costs, the arbitrators find no circumstances to justify the request.

THE AWARD

No damages are awarded in this case.

Decided: November 29, 2018

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

Karl Setzer, *Chair*
Operations Manager
Citizens, LLC
Charlotte, MI

Mitch Payne
Chief Operating Officer
Northwest Grain Growers
Dayton, WA

Jason Ballow
Commodity Trader
J.D. Heiskell & Co.
Elkhorn, NE