



August 13, 2020

CASE NUMBER 2835

**PLAINTIFF: DONALD J. MORSE
BIRCH RUN, MI**

**DEFENDANT: GAVILON GRAIN, LLC
CARROLLTON, MI**

STATEMENT OF THE CASE

Contract no. P142302 was a “Pool Pricing” purchase contract between Donald Morse and Gavilon Grain, LLC (Gavilon), dated December 8, 2015, for 25,000 bushels of soybeans for delivery October 1, 2017 – November 30, 2017. The basis price under the contract was $-\$0.10000$. Included with the contract was a Contract Producers’ Edge Pricing Addendum, which explained the details of the pricing program that applied to the contract. Two details in the addendum particularly pertinent to this case were “COST OF PROGRAM: .10 fee” and the statement in paragraph 6:

Seller shall set the local basis on or before the first day of the delivery period. In the event the customer fails to set the basis, the basis shall be established using the Gavilon Grain, LLC. Location posted basis at 1:15 P.M. (Central) on the first day of the delivery period.

In this case, Mr. Morse is disputing the final price that he received for the soybeans, requesting reimbursement of attorney fees (\$2,400) and the arbitration services fee (\$750).

Mr. Morse acknowledged that he entered into the contract with Gavilon on December 8, 2015. The contract confirmation, which was signed by both parties, provided that the basis was $-\$.10$. When Mr. Morse began to harvest in the fall of 2017 and deliver soybeans to apply to the contract, he received a new contract in the mail with a basis of $-\$.56$. He delivered the soybeans but did not sign the new contract. He received a check for the delivered soybeans that used the $-\$.56$ basis. Mr. Morse then demanded that Gavilon honor the $-\$.10$ cent basis on the original confirmation, and that he was owed \$11,500 (the $\$.46$ difference in basis x 25,000 bushels).

Gavilon admitted its representative incorrectly wrote in the program fee of “.10” per bushel into the basis column in original contract confirmation. Gavilon contended that Mr. Morse had prior experience with this pricing program and should have known this was a mistake and “a simple drafting error”. Gavilon also claimed it attempted to own up to the error and offered Mr. Morse full payment of \$11,500 if Mr. Morse signed a so-called “simple settlement agreement to document it.”

Mr. Morse declined to sign the agreement. Mr. Morse stated he was told by Gavilon that he could only disclose the terms of the settlement with his “tax person”. Mr. Morse stated he was told by Gavilon that

if he “talked to someone else [Gavilon] could come after [him] for limitless damages.” He consequently rejected Gavilon’s offer of \$11,500.

THE DECISION

The arbitrators concluded there was an original contract between the parties. NGFA Grain Trade Rule 3(A) [Confirmation of Contracts] states:

Both the Buyer and Seller shall send a written confirmation ... Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any differences, shall immediately notify the other party...

The obligation to check specifications and follow up with the other party under Rule 3(A) also applies to the party which issues the confirmation. In this case, Gavilon sent the confirmation in December 2015 with a clerical error. There was ample time before the fall of 2017 to correct this issue. Paragraph B of Grain Trade Rule 3 also applies because only one party sent a confirmation.

The arbitrators noted that this dispute could have been avoided by either party. Gavilon had almost two years from the date of the original contract to the delivery period to correct or at least discuss the error with Mr. Morse. Mr. Morse had previous experience with this pricing program and should have known that the basis of $-\$.10$ was incorrect. Further, Mr. Morse failed to contact Gavilon after receiving the amendment with a basis price of $-\$.56$ and service fee of $-\$.10$, dated October 3, 2017. Mr. Morse acknowledged that after he received the amended confirmation, he simply declined to sign it, harvested his soybeans, and then protested the price paid after receiving the check from Gavilon.

The arbitrators unanimously concluded that Mr. Morse be awarded the \$11,500 for the original mistake. Under the facts and circumstances of this case, the arbitrators decided to follow the general principle that it is the responsibility of each party to pay its own legal expenses and fees. Therefore, no legal or arbitration fees were awarded to either party in this case.

THE AWARD

The arbitrators awarded \$11,500 in damages to Donald J. Morse from Gavilon Grain, LLC.

Decided: July 10, 2019

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

Dan Beard, *Chair*
Assistant Manager
Assumption Cooperative
Assumption, IL

Chris Hager
Merchant
Sunrise Cooperative
Uniopolis, OH

Matt Stuever
Origination Manager
Bartlett Grain Company L.P.
Council Bluffs, IA