



# Arbitration Decision

National Grain and Feed Association

September 29, 1994

## Arbitration Case Number 1713

**Plaintiff: Stephen Brown, Aledo, Ill.**

**Defendant: Continental Grain Co., New Boston, Ill.**

### Statement of the Case

This case was arbitrated upon the complaint of Stephen Brown, the plaintiff, against Continental Grain Co., the defendant, following the issuance of a court order directing the plaintiff to "submit his complaint to arbitration pursuant to the contract of the parties<sup>1</sup>."

The dispute involved two soybean contracts for delivery by the plaintiff to the defendant's New Boston, Ill., elevator. Contract number 1 was entered into on April 5, 1993 and provided for delivery of 7,500 bushels of soybeans at \$6 per bushel between July 1 and July 31, 1993. Contract number 2 was entered into on July 29, 1993 and provided for delivery of 2,000 bushels of soybeans at \$6.81 per bushel between Nov. 1 and Nov. 30, 1993. The plaintiff sought damages in the amount of \$4,275 against the defendant, alleging that the defendant wrongfully set-off that amount against payment due the plaintiff. The defendant contended that its offset was justified to recover for non-delivery and cancellation of contract number 1 by the plaintiff.

The defendant's New Boston elevator was a river facility and the defendant conceded that it was unable to take delivery because of flooding on the Mississippi River from June 27, 1993 to Aug. 6, 1993. On July 29, 1993, the plaintiff's attorney sent the defendant a certified letter which stated in part:

*"This letter is to notify you that Mr. Brown will wait until August 6, 1993, to hear from you regarding where he should deliver these soybeans to your account. Should Mr. Brown not hear from you by August 6, 1993, he will consider you to be in default of your contract for failure to take delivery of the soybeans. At that time, Mr. Brown will consider the contract to be terminated and he will make other arrangements for the sale of the soybeans."*

The defendant contended that its manager offered the plaintiff three alternatives on July 30 as a result of the plaintiff's notice: 1) Cancel out the contract; 2) deliver the soybeans to the New Boston facility when the river opened and the defendant could receive the soybeans, allowing 30 days to make delivery; or 3) deliver the soybeans to the defendant's facility in Dubuque, Iowa, at the plaintiff's expense. According to the evidence submitted in the case, the plaintiff did not respond to the defendant's offer. On Aug. 6, the defendant's manager again attempted to contact the plaintiff and told the plaintiff's wife that the defendant's New Boston facility was able to take deliveries and would be taking soybeans again on Monday, Aug. 9. On Aug. 9, the defendant received a letter from the plaintiff's attorney, dated Aug. 5, 1993, which indicated that "[a]s of the close of business on August 6, 1993, Mr. Brown will repudiate the above-referenced contract."

<sup>1</sup> The plaintiff had filed a civil complaint against defendant, which defendant moved to dismiss based on the language contained in two contracts between the parties. Stephen Brown v. Continental Grain, Case No. 93-SC 209 (Cir. Ct. of the Fourteenth Jud. Cir., Mercer County, Ill.) (order granting defendant's motion). Both contracts provided that "CONTRACT TERMS GOVERNED BY RULES OF NATIONAL GRAIN & FEED ASSOCIATION" and "Buyer and Seller agree that all controversies between them under this contract be settled by arbitration ... before the National Grain and Feed Association pursuant to its grain arbitration rules. Buyer and Seller agree that judgement may be entered upon any arbitration award in any court of competent jurisdiction."

The defendant made further attempts to contact the plaintiff. Ultimately, on Aug. 17, the defendant received a FAX from the plaintiff's attorney confirming that, "Steve Brown will not be delivering to Continental Grain Company the 7500 bushel of soybeans contract" and confirmed that Mr. Brown was "repudiating the contract." The defendant proceeded to buy-in the defaulted portion of the contract pursuant to NGFA Grain Trade Rule 10 and sent the plaintiff an invoice for the difference in price of \$4,275. The defendant deducted the invoiced sum from the amounts paid over to the plaintiff on contract number 2 when the plaintiff delivered soybeans on that contract in November 1993.

### **The Decision**

The arbitrators reviewed all of the arguments submitted by both parties and found that the plaintiff defaulted on the contract when he unilaterally repudiated it. The arbitrators concluded that the plaintiff had extended the contract in writing to Aug. 6, 1993 by the letter from plaintiff's attorney dated July 29, 1993. The defendant, therefore, had until the close of business on Aug. 6 to make delivery arrangements for the plaintiff's soybeans.

The defendant provided the plaintiff with several delivery options on July 30. However, the defendant -- when its manager talked to the plaintiff's wife on Aug. 6 -- also communicated to the plaintiff the ability to take delivery at the defendant's New Boston facility prior to expiration of the extended contract period. Thus, the defendant met its contractual obligations and it was the plaintiff who defaulted by refusing to make delivery.

Under the circumstances, the defendant acted reasonably by proceeding to buy-in under NGFA Grain Trade Rule 10. Cancellation of a contract does not relieve any party from its responsibility to settle the market differences resulting from the cancellation.

### **The Award**

Since the arbitrators concluded that the defendant acted properly by buying-in under NGFA Grain Trade Rule 10, the defendant's offset for the invoiced amount against the later proceeds generated by contract number 2 was appropriate. The plaintiff's claim was denied. The arbitrators also denied the defendant's claim that the plaintiff pay for the costs of the arbitration.

Submitted with the unanimous consent and approval of the arbitration committee, whose names appear below:

**David Duncan, Chairman**  
The Andersons  
Metamora, Ohio

**Keith Hainy**  
L & O Acres  
Westport, S.D.

**Ron Edge**  
Owensboro Grain Co.  
Owensboro, Ky.