



Arbitration System

NATIONAL GRAIN AND FEED ASSOCIATION

August 21, 1995

NGFA ARBITRATION CASE NO. 1749

Plaintiff: James O. Rogers, Mansfield, Ohio

Defendant: Coshocton Grain Co., Coshocton, Ohio

The defendant in this case, Coshocton Grain Co. ("Coshocton"), has requested that the national secretary find that the claims asserted against it by the plaintiff, James O. Rogers ("Rogers"), were not filed with the National Grain and Feed Association within the time periods set forth in Section 3(d) of the NGFA Arbitration Rules. Coshocton raised this argument after the execution of the "Contract for Arbitration" in a document styled as a motion for summary judgment. Rogers has since filed his first argument in the case.

The NGFA Arbitration Rules provide that "[t]he administrative work in connection with arbitration shall be handled by the National Secretary." See Section 1 of the NGFA Arbitration Rules. The substantive decisions in arbitration cases are made by arbitration committees selected pursuant to the standards set forth in Section 4 of the NGFA Arbitration Rules. Coshocton's request involves the issue of whether NGFA has jurisdiction over the parties' claims under Section 3 of the NGFA Arbitration Rules. Jurisdictional issues have consistently been construed as being administrative matters decided by the national secretary.

FACTUAL AND PROCEDURAL BACKGROUND

This dispute involves a claim by Rogers arising from contracts with Coshocton dated on or about December 3, 1992 and December 18, 1992, under the terms of which Rogers agreed to sell and deliver a total of 150,000 bushels of # 2 yellow corn to Coshocton. Rogers contends that Coshocton breached the contracts "as a result of the test weight and foreign material discounts improperly made by Coshocton, and the calculation of the damage discounts." In "Plaintiff's First Argument," Rogers alleges damages in the amount of \$45,711.88, not including attorney fees and costs. Rogers also seeks interest from August 20, 1993.

Rogers brought suit against Coshocton in the Court of Common Pleas of Coshocton County, Ohio, Case No. 93-CI-372, on November 15, 1993. The complaint also named the

receiver for Coshocton Grain Co. as a party because the company had earlier been placed under receivership by the court pursuant to Ohio law. Rogers was not a NGFA member and contends that "Coshocton did not raise arbitration as a defense to Rogers' claim until June 6, 1994 (almost six (6) months after Rogers filed his Complaint), when it sought to amend its answer and raise the defense."

On July 28, 1994, the trial court issued a "Judgment Entry" which provided, among other things, the following:

"The court finds the motion to remand to arbitration to be well-taken and it is therefore ordered that before further proceedings are taken in this court, the parties shall proceed to arbitration as provided for in Section 3(A) of the regulations of the National Grain and Feed Association. The court finds that both parties have agreed to be bound by the trade regulations of this association which regulations include the arbitration requirement."

Notwithstanding the court's order, neither party to the case filed a request for arbitration with the NGFA at that time. Indeed, it appears that both parties continued battling in court. On August 11, 1994, Rogers filed an answer to Coshocton's counterclaim with the court. Then, on October 17, 1994, Coshocton filed a motion for summary judgment with the court wherein it argued that Rogers had failed "to file a claim for arbitration within the period designated by the contract." On October 20, 1994, Rogers filed a reply to Coshocton's motion for summary judgment with the court. Thereafter, further pleadings were filed with the court by each of the parties.

On November 29, 1994, the court issued a new "Judgment Entry" which provided, in pertinent part, that:

"(1) Further proceedings in this matter in this court, including the trial by jury scheduled for December 20, 1994, are stayed and the matter is remanded to binding arbitration pursuant to a judgment previously entered.

(2) The trial date noted above is vacated.

(3) Defendant, Coshocton Grain Company, shall, within thirty (30) days of this judgment, file a complaint with the National Secretary of the National Grain and Feed Dealers Association requesting arbitration of the disputed matters in this case and pay the required fee; and

(4) The court orders that the parties proceed to binding arbitration pursuant to that complaint and advise the court of the results of such arbitration."

While Coshocton did submit the dispute to the NGFA for arbitration by letter dated December 20, 1994, Coshocton also filed an appeal of the trial court's November 29, 1994

judgment entry with the Fifth District Court of Appeals of the State of Ohio on December 16, 1994. Rogers cross-appealed, arguing that the trial court erred in ordering the parties to submit to arbitration. In its December 20, 1994 letter to the NGFA, Coshocton stated that:

"Although defendant Coshocton Grain Company believes it is improper for the National Secretary to arbitrate the parties' differences while defendant Coshocton Grain Company is appealing Judge Evans' most recent Judgment Entry, it is submitting the enclosed 'Complaint' to the National Secretary in order to comply with Judge Evans' Entry dated 11/29/94."

Thereafter, both parties agreed to hold the arbitration case in abeyance pending a decision by the Ohio appellate court.

On June 15, 1995, a three-judge panel of the Fifth District Court of Appeals of the State of Ohio dismissed Coshocton's appeal and Rogers' cross-appeal of the trial court's November 29, 1994 order. The appellate court found, in a unanimous decision, that the trial court's November 29, 1994 order was not a "final appealable judgment." The appellate court also found that the "judgment ordering the parties to arbitration was a final judgment on July 28, 1994. Because Rogers did not file a timely notice of appeal from that order, it is *res judicata*, and not properly before us now."

Thereafter, Coshocton withdrew its request for arbitration by letter dated June 20, 1995 on the grounds that the trial court's November 29, 1994 judgment entry ordering Coshocton to file for arbitration was null and void. Rogers then submitted a signed "Contract for Arbitration" and the \$800 arbitration fee by letter dated July 12, 1995. Coshocton executed the "Contract for Arbitration" and returned it to the NGFA by letter dated July 20, 1995, wherein the attorney for Coshocton stated that "[n]otwithstanding defendant Coshocton executing the contract for arbitration, it does so without waiving any of its substantive or procedural rights set forth in the arbitration rules."

DECISION

Section 3 of the NGFA Arbitration Rules sets forth the circumstances under which parties must or may arbitrate disputes before the NGFA. While Section 3(a)(2) clearly permits the NGFA to accept cases for arbitration involving a member and a non-member, Section 3(d) sets forth jurisdictional time limitations for the filing of arbitration claims.

Ordinarily, a claim for arbitration "must be filed with the National Secretary within twelve (12) months after expiration date for performance of the contract or contracts involved." The contracts in this dispute were entered into on December 3 and 18, 1992. Rogers' first argument discloses that the deliveries on the contracts spanned a period from December 28, 1992 through August 20, 1993. Even under the most favorable interpretation which could be applied to the 12-month rule set forth in Section 3(d) of the NGFA Arbitration Rules, the last date for

the filing of a complaint for arbitration before the NGFA would have been on or about August 20, 1994.

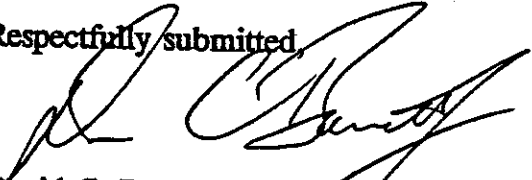
Section 3(d) of the NGFA Arbitration Rules also provides that "[f]or cases, between a member and nonmember arbitrated pursuant to court order, the complaint must be filed with the National Secretary by either or both parties within 30 days of issuance of court order." Coshocton argues that the relevant court order is the "Judgment Entry" issued by the trial court on July 28, 1994. Rogers, however, points out that on November 29, 1994 the trial court subsequently ordered Coshocton to file the arbitration complaint with the NGFA. Coshocton's appeal of that order was dismissed by order of the Ohio appellate court on June 15, 1995.

The NGFA Arbitration Rules do not set forth a definition of "court order." While Coshocton argues that the July 28, 1994 order is the relevant order, the parties' conduct shows that their court battles continued after that date. The latest court order was issued on June 15, 1995 by the Fifth District Court of Appeals of the State of Ohio. The appellate court's ruling left both of the prior rulings intact. Rogers' request for arbitration was filed within thirty (30) days of the June 15, 1995 court order issued by the appellate court.

CONCLUSION

In conclusion, Rogers filed his arbitration complaint with the NGFA within thirty (30) days of the latest court order. The NGFA, therefore, has jurisdiction over the claims of the parties pursuant to Section 3(d) of the NGFA Arbitration Rules.

Respectfully submitted,



David C. Barrett, Jr., Esq.
NGFA Counsel for Public Affairs/
National Secretary-Treasurer