National Grain and Feed Association
Arbitration Decision

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June 27, 2002

Arbitration Case Number 1829

Plaintiff: **The Andersons Inc., Maumee, Ohio**

Defendant: **Douglas Wire, Berrien Springs, Mich.**

[National Secretary's Note: Action on this case, first filed with the NGFA on May 28, 1997, was twice delayed for substantial periods. The case was delayed initially pending the outcome of litigation, which was resolved on April 15, 1999 when the Circuit Court of Berrien County, Mich., ordered the parties to arbitrate the dispute. The contract for arbitration was not executed until Oct. 29, 1999. Shortly thereafter, the case was delayed again by the failure of the defendant to reply to the plaintiff's first argument. On March 21, 2000, the National Secretary issued an order granting the defendant's request to vacate a default judgment against said defendant. Thereafter, the case proceeded to resolution.]

Statement of the Case

This case involved a dispute arising from the non-delivery of corn and soybeans in fulfillment of nine hedge-to-arrive ("HTA") contracts entered into between Douglas Wire, producer-seller, and The Andersons Inc. ("The Andersons"), the buyer.

The Andersons contended that Wire breached the contracts by refusing to deliver and sought damages in the amount of $18,035.93 for contract cancellation, plus interest and attorney fees. Wire claimed that The Andersons failed to accurately calculate the amount due on the contracts and failed to credit Wire for deliveries made to another facility of The Andersons in Delphi, Ind. Wire further contended that The Andersons' claim for attorney's fees was unreasonable and that the interest amount requested was excessive and arbitrary.

The Andersons and Wire had a prior history dating back to 1992 of entering into cash grain contracts utilizing an HTA pricing mechanism. Wire completed delivery on most of the contracts entered into during that time frame, with the exception of the nine contracts that were disputed in this case. Those nine contracts were entered into for delivery during the 1995 crop year and included three soybean contracts and six corn contracts.

Wire did deliver some additional grain to The Andersons at its Delphi, Ind., facility in the fall of 1995, but the grain was not applied to any of the contracts that were the subject of this dispute, pursuant to Wire's election. On Jan. 9, 1996, Wire contacted The Andersons' grain buyer to seek an extension of the delivery period of eight of the 1995 contracts to the 1996 crop year. Both parties agreed and signed amended contracts.[1] The rolling forward of the delivery obligation to the 1996 crop year also required the establishment of different futures reference prices for the HTA contracts. This resulted in amended contract prices that were less than the original contract prices due to a substantial drop in futures between the 1995 and 1996 crop years.

Wire failed to complete delivery or settle the contracts in dispute by the end of 1996. On two occasions, The Andersons sent letters to Wire indicating that it still expected delivery under the contracts and requested that he meet with an employee of The Andersons to discuss delivery or cancellation of contract balances. Wire did not respond. The Andersons then sent Wire an accounting of the amounts owed due to the failure to deliver. When Wire did not respond to the letter, The Andersons filed a request for arbitration on May 28, 1997.

Before proceeding with the arbitration, however, The Andersons sought an order to compel the arbitration of the dispute from the Circuit Court for the County of Berrien, Mich., which was granted on Oct. 7, 1998.

[1] *Contract No. 23539 was not amended.*

The Decision

The arbitrators reviewed all submitted materials, including court documents and exhibits presented by both plaintiff and defendant. The arbitrators concluded that both parties agreed to the contracts and amendments thereto. Each contract established a delivery period agreed to by both parties. Under the terms of the original contracts, Wire was obligated to make delivery and The Andersons was obligated to accept delivery during October/November of 1995. The amendments to eight of the nine contracts changed the delivery period to October/November 1996, but left intact the obligations of both parties.

Paragraph 9 of The Andersons' *Standard Purchase Contract Terms* provided as follows:

> *"Seller's failure to perform on the Contract will result in contract cancellation charges to Seller, the total of which will be the difference between the Contract price and the replacement cost at the time of cancellation, plus a minimum cancellation charge of ten cents ($.10) per bushel. Seller shall also be liable for the Buyer's attorney fees, costs of collection plus interest."*

The Andersons canceled the contracts in dispute on or before Jan. 7, 1997, and calculated that under the contracts, a certain amount was to be paid by Wire, as shown in the following table:

The arbitrators found that The Andersons exercised due diligence and acted properly to mitigate Wire's damages by canceling the contracts on Jan. 7, 1997, pursuant to Paragraph 9 of the contract.

Contract Number	Amount of Bushels	Commodity	Delivery Period	Net Market Difference (Market Price – Net Contract Price – Cancellation Fee (.5/bu)	Net Amount Due
27248	1,000	Soybeans	Oct/Nov 1996	$ 0.48/bu	$ 480.00
27377	515	Soybeans	Oct/Nov 1996	0.395	203.43
27378	2,000	Soybeans	Oct/Nov 1996	0.41	820.00
23539	5,000	Corn	Oct/Nov 1995	(0.13)	(650.00)
24329	5,000	Corn	Oct/Nov 1996	1.455	7,275.00
25205	5,000	Corn	Oct/Nov 1996	1.425	7,125.00
26732	3,000	Corn	Oct/Nov 1996	1.115	3,345.000
027032	5,000	Corn	Oct/Nov 1996	(0.045)	(225.00)
27394	2,500	Corn	Oct/Nov 1996	(0.135)	(337.50)
				Total Amount Due	**$18,035.93**

The Award

Therefore, it is ordered that:

Douglas Wire pay to The Andersons the amount of $18,035.93, plus compound interest at the rate of 9 percent per annum from Jan. 7, 1997 until the date paid.

It also is ordered that Douglas Wire pay attorneys' fees and collection costs incurred by The Andersons in the amount of and not to exceed $8,514.50.[2]

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

David Swenson, *Chairman*
Senior Vice President, Country Operations
Cenex Harvest States
St. Paul, Minn.

Chuck Piper
Sub-Region Manager
Consolidated Grain and Barge Co.
Mt. Carroll, Ill.

Gene Legg
General Manager
Dumas Elevator Co.
Dumas, Texas

[2] *The Andersons provided an itemized statement to the NGFA Secretary that verified the expenditures of this amount in connection with this dispute.*