



# Arbitration Decision

National Grain and Feed Association

September 10, 1998



## Arbitration Case Number 1847

**Plaintiff: Murphy Grain Marketing Inc., Overland Park, Kan.**

**Defendant: Harvest States Cooperatives, St. Paul, Minn.**

### Statement of the Case

This case involved a dispute over the delivery terms on a rail shipment of hard red winter wheat and the consequences of a resulting cancellation.

The plaintiff, Murphy Grain Marketing Inc. (Murphy), sought damages of \$4,662.60 against the defendant, Harvest States Cooperatives (Harvest States). The defendant requested a dismissal of the plaintiff's claims and an award of \$1,235.40 against Murphy.

It is undisputed that the defendant, Harvest States, on March 27, 1997 purchased two railcars (designated as "APPROX. 6,600.00 BU.") of U.S. No. 2 hard red winter wheat from Murphy<sup>1</sup>. Murphy's "sale contract" dated March 27, 1997 contained terms that provided as follows: "FRT. BASIS: DELIVERED PORTLAND, OR.; (BNR.R.)" at "PRICE: \$5.04 PER BUSHEL" for "SHIPMENT: SPOT." Harvest States' purchase confirmation dated March 27, 1997 provided as follows:

"MISC: UP, NAHX 53940, PLCX26705  
ENID, OK  
FUT: \$4.26  
BAS: + \$ .78 KC MAY WHT/BAS DLVD COAST  
EXPORT/RAIL  
NET: \$5.04 PER BUSHEL  
SHIPMENT PERIOD: SHIPMENT 03/27/97 - 3/28/97"

Harvest States applied the grain purchased from Murphy to a separate transaction it had previously entered into with Columbia Grain International (Columbia)<sup>2</sup>. Columbia billed the two railcars to a Kansas City delivery point, and Harvest States communicated those instructions to Murphy. It was at this point that the dispute arose.

Murphy formally canceled the contract on April 2, 1997 and sent a facsimile notice to Harvest States. Murphy then sold the rail wheat to another buyer at a "futures loss" of \$924 (14 cents per bushel). In turn, Harvest States immediately notified Murphy that it was claiming damages of \$3,738.60 based upon a buy-back by Columbia on the Harvest States/Columbia transaction. Harvest States withheld a portion of its claimed damages from a subsequent payment due Murphy on an unrelated contract, but claimed a balance still owing of \$1,235.40.

Murphy contended that, at the time of the sale, Harvest States was advised that the cars had to be delivered specifically to Portland, Ore., and that the cars were moving free of freight from Tulsa, Okla., via an agreement with the Union Pacific Railroad Co. In contrast, Harvest States contended that a specific unload destination elevator was not named and that it was due the tariff freight savings for freight delivery to Kansas City versus Portland.

<sup>1</sup> Murphy Grain Marketing Inc. and Harvest States Cooperatives were and are NGFA Active members.

<sup>2</sup> The Harvest States/Columbia contract was dated Jan. 23, 1997, with a shipment period for the last half of March 1997. The contract documentation showed terms indicating "delivered North Coast Export, seller's option, seller's barge, all full coast units, single cars. Portland Merchants Exchange rules to govern" and "BAS DLVD COAST EXPORT/RAIL." These variations were created by different terminology appearing in a broker's confirmation and a sale confirmation in the Harvest States/Columbia transaction.

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## The Decision

The arbitrators, after reviewing the contract documentation presented by both parties, concluded that this case centered on whether a specific delivery point was requested by Murphy at the time of sale to Harvest States. The designation of a specific delivery point would have protected the "free freight move" referenced by Murphy. The arbitrators found that the sale contract documents presented by Murphy and Harvest States did not reference a specific delivery point. Instead, the arbitrators concluded that the references in the contractual documents to a "freight basis delivered Portland, OR (BN R.R.)" were pricing terms.

Therefore, the arbitrators concluded that Murphy failed to produce documentation showing that the parties' transaction was based upon delivery to a specific unload point (Portland, Ore., "free of freight" per UPSP). Since Harvest States disagreed with Murphy's contentions, it was diffi-

cult to find such a term to be part of the contract where Murphy's sale contract was silent on the issue.

While past NGFA arbitration cases are not formal precedent, past cases sometimes are useful to illustrate accepted trade custom. The arbitrators in NGFA Arbitration Case Numbers 1568 and 1570 also concluded that a freight basis term is simply a pricing mechanism to establish a freight relationship, and that shipments can be arbitrated unless a specific unload elevator is named. The purpose of this pricing mechanism as used by the trade is to preserve a fluid market and establish a mutually agreed upon transportation expense. If Murphy locked in a rate and destination point, this agreement should have been specifically addressed in the freight basis in the sale contract. Otherwise, trade custom is to permit a buyer to arbitrage the shipment pursuant to the contract freight basis assuming tariff spreads.

## The Award

The arbitrators denied the claim asserted by Murphy Grain Marketing Inc. The arbitrators awarded Harvest States Cooperatives the sum of \$1,235.40 on its claim against Murphy Grain Marketing Inc.

Harvest States failed to show any contractual or other right to withhold payment to Murphy on another contract because of this dispute. Therefore, the arbitrators declined to award interest to Harvest States prior to the date that this decision becomes final. Thus, no interest is due on this award provided it is paid by Murphy Grain Marketing Inc. within 15 days of being notified of this decision.

Submitted with the consent and approval of the arbitration committee, whose names are listed below:

**Sharon Mock, *Chairman***  
Director, Traffic, Grain and Oilseeds Division  
Perdue Farms Inc.  
Salisbury, Md.

**Mike Cassidy**  
President  
Cassidy Grain Co.  
Frederick, Okla.

**Michael Orgas**  
Senior Trading Manager  
ConAgra Grain Companies  
Minneapolis, Minn.