



# National Grain and Feed Association Arbitration Decision

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February 10, 2000

## Arbitration Case Number 1862

**Plaintiff:** Cargill Inc., Minneapolis, Minn.

**Defendant:** Douglas Bergemann, *aka* Doug Bergemann, Trimont, Minn.

### Factual and Procedural Background

Cargill Inc. (Cargill), the plaintiff, requested the entry of a default judgment in the amount of \$174,500 against Douglas Bergemann, *aka* Doug Bergemann (Bergemann), the defendant. The judgment was granted for the reasons set forth herein.

Cargill filed its initial arbitration complaint with the National Grain and Feed Association in a letter dated Nov. 5, 1997, which was received on Nov. 10, 1997. Cargill's arbitration complaint alleged, among other things, that Bergemann had breached several grain contracts<sup>1</sup> entered into during June 1995. Cargill's arbitration complaint also stated that each of the contracts contained provisions that required the parties to submit unresolved disputes to NGFA arbitration. Likewise, Cargill indicated that Bergemann signed the contracts.

Acting upon Cargill's complaint, the NGFA prepared a contract for arbitration and sent it to Cargill for execution by letter dated Nov. 11, 1997. The NGFA's records also showed that Bergemann was sent initial notice of Cargill's complaint by letter dated Nov. 11, 1997 via U.S. Postal Service Certified Mail<sup>2</sup>.

Cargill on Nov. 25, 1997 executed the contract for arbitra-

tion, as required under the NGFA Arbitration Rules, and returned the executed contract to the NGFA along with the arbitration service fee of \$1,647.

The NGFA then sent a letter via U.S. Postal Service certified mail<sup>3</sup> dated Nov. 25, 1997 to Bergemann, which requested execution of the contract for arbitration and payment of the arbitration service fee of \$1,647. Thereafter, the NGFA sent a letter dated Jan. 16, 1998 to the defendant via U.S. Postal Service certified mail<sup>4</sup>. Once again, the NGFA requested that Bergemann execute the arbitration contract and pay the required arbitration service fee. Previous attempts to contact Bergemann were described in the letter, as well as the possibility that "a default judgment may be entered against you without further notice."

Cargill, by letter dated Nov. 12, 1998, filed an initial request for a default judgment and supplemented its request with copies of the grain contracts. Cargill also amended the amount of damages claimed from \$178,775 to \$174,500. Thereafter, Cargill requested<sup>5</sup> that the "NGFA stay any further action...until Cargill obtains a court order compelling arbitration."

<sup>1</sup> Contract numbers 76055-13 (76055), 76056-13 (76056), 76057-13 (76057), 76058-13 (76058), 76059-13 (76059) and 76060-13 (76060) for a total of 140,000 bushels of U.S. No. 2 yellow corn. Cargill's complaint and subsequent supporting documentation outlined subsequent amendments to the delivery terms (to Fall 1996, Fall 1997 and Fall 1998) of the "No Basis Established" contracts and the alleged breaches for non-delivery.

<sup>2</sup> Notices to the defendant were sent to: Doug Bergemann, Route 1, Box 150, Trimont, MN 55176; The U.S. Postal Service domestic return receipt "Article Number Z 338 919 856" showed that the letter was signed for on Nov. 26, 1997 by a "Kathy Bergemann."

<sup>3</sup> The U.S. Postal Service domestic return receipt "Article Number Z 338 921 975" showed that the letter was delivered on Dec. 1, 1997 and was received by a "Douglas Bergemann."

<sup>4</sup> The U.S. Postal Service domestic return receipt "Article Number Z 015 220 940" showed that the letter was delivered on Jan. 21, 1998 and was signed for by a "Douglas Bergemann."

<sup>5</sup> Letter from Cargill dated Dec. 18, 1998.

Cargill on Nov. 15, 1999 notified the NGFA that a court order<sup>6</sup> compelling Bergemann to arbitrate had been issued. The court order provided as follows:

"1. Cargill's motion to compel arbitration is granted;

"2. The parties are to proceed to arbitrate their disputes concerning grain purchase contracts between them before the National Grain and Feed Association ('NGFA') and pursuant to NGFA arbitration rules;

"If Bergemann refuses to arbitrate before the NGFA, Cargill may seek a default arbitration order from

the NGFA. If the NGFA has procedures for a default proceedings, they shall be followed; if the NGFA has no such procedures, the NGFA may enter default judgment if respondent refuses to sign the NGFA agreement within 30 days from the date of this order."

The NGFA subsequently sent Bergemann another letter via U.S. Postal Service certified mail<sup>7</sup> requesting execution of the contract for arbitration and payment of the required arbitration service fee. Once again, Bergemann failed to respond. Cargill, by letter dated Jan. 12, 2000 to the NGFA, renewed its request for entry of default judgment against Bergemann.

## The Decision

Section 3(a)(2) of the NGFA Arbitration Rules provides, among other things, that:

*"If the contract in dispute between a member and nonmember provides for arbitration by the National Association or under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitration under these rules."* [Emphasis added.]

Each of the contracts submitted by Cargill contained the following provision as part of numbered item 1:

*"The parties both agree that the sole remedy for resolution of all disagreements or disputes between the parties arising under this agreement shall be arbitration proceedings under NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties."*

Cargill was and is a NGFA Active member. Bergemann is not a member. Nevertheless, the contractual documents clearly demonstrated that both parties agreed to submit any unresolved disputes to NGFA arbitration under the NGFA Arbitration Rules should an arbitration complaint be filed. Thus, the NGFA had jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules. In this case, Bergemann also was ordered by a court to sign the arbitration agreement or risk entry of a default judgment.

The NGFA's records showed that Bergemann actually received notice of the claims asserted against him by Cargill. Thus, it appeared that Bergemann's failure to respond to the arbitration complaint was intentional. This failure continued after entry of the court order compelling arbitration.

Section 1 of the NGFA Arbitration Rules vests in the National Secretary the responsibility and authority to administer the NGFA Arbitration System. As such, the National Secretary makes such decisions as are necessary to implement the NGFA Arbitration Rules.

Section 5(d) of the NGFA Arbitration Rules imposes a duty upon each party to complete and return the contract for arbitration "within fifteen (15) days from the date the party receives the contract from the National Secretary." Section 5(c) of the NGFA Arbitration Rules imposes an obligation on each party to pay the appropriate arbitration service fee at the same time.

Bergemann failed to comply with the NGFA Arbitration Rules, notwithstanding clear evidence that he was obligated to comply and had received notice of Cargill's claims. Likewise, Bergemann failed to comply even after entry of a court order compelling him to do so. Therefore, it was appropriate to enter the requested award in favor of Cargill Inc. against the defendant, Douglas Bergemann, *aka* Doug Bergemann.

## The Award

Therefore, it is ordered that:

- ▶ Cargill Inc. is awarded a judgment against Douglas Bergemann, *aka* Doug Bergemann, in the amount of \$174,500 for losses set forth in the arbitration complaint, as amended, and the request for default judgment.
- ▶ Compound interest on the judgment shall accrue at the rate of 16 percent per annum from Nov. 5, 1997 until all amounts are paid in full.

Dated: Jan. 19, 2000

National Grain and Feed Association

By: David C. Barrett, Jr., National Secretary

<sup>6</sup> *Cargill, Incorporated vs. Doug Bergemann, No. C6-99-323 (Minn. Fifth Judicial Dist. Ct., Martin County, Sept. 21, 1999).*

<sup>7</sup> *The U.S. Postal Service domestic return receipt "Article Number Z 597 307 644" showed that the letter was delivered on Dec. 10, 1999 and was signed for by a "Kathy Bergemann."*