



# National Grain and Feed Association Arbitration Decision

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Aug. 10, 2000

## Arbitration Case Number 1962

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

**Defendant: Norman Kohlmeyer, Blue Earth, Minn.**

### Factual and Procedural Background

Cargill Inc. (Cargill), the plaintiff, requested the entry of a default judgment in the amount of \$117,800 against Norman Kohlmeyer (Kohlmeyer), the defendant.

The judgment was granted for the reasons set forth below.

Cargill filed its initial arbitration complaint pursuant to a letter dated June 29, 1998, received by the National Grain and Feed Association (NGFA) on June 30, 1998. Cargill's arbitration complaint alleged, among other things, that Kohlmeyer had defaulted on or repudiated 10 "No Basis Established" (NBE) contracts. Those contracts<sup>1</sup>, according to Cargill's allegations, obligated Kohlmeyer to deliver to Cargill a total of 90,000 bushels of U.S. No. 2 yellow corn. Cargill also represented that each contract contained terms providing for resolution of all disputes pursuant to NGFA arbitration.

Acting upon Cargill's complaint, the NGFA prepared a *National Grain and Feed Association Contract for Arbitration* and sent it to Cargill for execution. The NGFA's records also showed that defendant Kohlmeyer was sent initial notice, and a copy, of Cargill's complaint by letter dated July 6, 1998 via U.S. Certified Mail<sup>2</sup>. The U.S. Postal Service domestic return receipt showed that the letter was received at Kohlmeyer's

address<sup>3</sup> on July 13, 1998.

As required by the NGFA Arbitration Rules, Cargill executed the contract for arbitration and returned the executed contract with the \$1,089 arbitration service fee, both of which were received on or about July 21, 1998.

The NGFA then sent a letter via U.S. Postal Service certified mail<sup>4</sup> dated July 24, 1998, to defendant Kohlmeyer, requesting execution of the contract for arbitration and payment of the arbitration service fee. The U.S. Postal Service domestic return receipt showed that the letter was received at Kohlmeyer's address<sup>5</sup> on July 30, 1998.

Subsequently, and apparently because of the lack of response by Kohlmeyer, Cargill petitioned a Minnesota state court for an order<sup>6</sup> compelling arbitration. The court found that the parties' contracts contained arbitration clauses, that the disputes "arise from contracts involving interstate commerce" and that the Federal Arbitration Act required arbitration of the parties' disputes. In addition, the court specifically ordered that "[i]f Norman Kohlmeyer refuses to arbitrate before the NGFA, Cargill may seek a default arbitration order from the NGFA."

<sup>1</sup> Cargill contract numbers 65133, 65134, 65135, 65136, 65137, 65138, 65139, 65140, 65152 and 65153.

<sup>2</sup> U.S. Postal Service article number Z 092 304 244.

<sup>3</sup> Route 1, Box 28, Blue Earth, MN 56013. A "Norma" or "Norman" Kohlmeyer signed for the letter.

<sup>4</sup> U.S. Postal Service article number Z 050 040 180.

<sup>5</sup> A "Norma" or "Norman" Kohlmeyer signed for the letter.

<sup>6</sup> *Cargill Incorporated v. Norman Kohlmeyer*, No. C7-99-442 (Minnesota Fifth Judicial District, Faribault County).

## The Decision

The defendant clearly received notice of the arbitration complaint filed against him. Nevertheless, the defendant failed to respond to the notices sent to him by NGFA. Further, the defendant opposed Cargill's request for a court order compelling arbitration, but then failed to return the contract for arbitration or arbitration service fee when he was ordered by the court to proceed with arbitration. Thus, it appeared that the defendant made a conscious decision not to proceed with NGFA arbitration.

Cargill was and is a NGFA Active member in good standing. Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, that: "[i]f the contract in dispute between a member and a 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 Arbitration Rules."

Thus, the language in the parties' contracts bound both parties to arbitrate this matter under the NGFA Arbitration Rules, even though the defendant was not a member. A Minnesota state court already reached the same conclusion.

There was no indication that defendant intended to execute the contract for arbitration, pay the required arbitration service fee, or otherwise comply with the NGFA Arbitration Rules. Section 5 of the NGFA Arbitration Rules requires a party to "complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary." The defendant violated the time limits in the rules<sup>7</sup>. Moreover, the defendant clearly received the NGFA's notices.

Section 1 of the NGFA Arbitration Rules provides that the "National Secretary shall have the authority to make such decisions as are necessary to carry out these Rules." Section 5(e) of the NGFA Arbitration Rules expressly authorizes the entry of default judgments where a party "fails to pay the arbitration service fee and/or fails to execute the contract for arbitration." The defendant in this case failed to comply with the NGFA Arbitration Rules. Thus, it was appropriate to enter the requested award in favor of the plaintiff, Cargill Inc., and against the defendant, Norman Kohlmeyer.

## The Award

Therefore, it is ordered that:

- ▶ Cargill Inc. is awarded a judgment against Norman Kohlmeyer in the amount of \$117,800.
- ▶ Compound interest on the judgment shall accrue at the highest statutory rate on judgments applicable in Minnesota from June 29, 1998, until all sums are paid in full.

Dated: Aug. 2, 2000

National Grain and Feed Association

By: David C. Barrett Jr.  
National Secretary

<sup>7</sup> The court order also provided that "[i]f NGFA has procedures for a default proceeding they should be followed; if the NGFA has no such procedures, the NGFA may enter default judgment if respondent refuses to sign the NGFA agreement and pay the applicable arbitration fee within (30) days from the date of this Order." Kohlmeyer failed to comply with either time period.