



# National Grain and Feed Association Arbitration Decision

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May 4, 2001

## Arbitration Case Number 1982

**Plaintiff: W.B. Johnston Grain Co., Billings, Okla.**

**Defendant: Concourse Grain LLC, Galveston, Texas**

### Statement of the Case

W.B. Johnston Grain Co. (Johnston) entered into a contract with Concourse Grain LLC (Concourse) for two separate rail shipments of grain to be delivered on Jan. 4-5, 1999 ("First Shipment") and March 11, 1999 ("Second Shipment").

Johnston delivered the grain to Concourse by rail. But before shipping, a certified weight certificate was issued for each rail car. Upon receipt of the shipments, Concourse weighed the rail cars in multiple units, or batches. Johnston cited deficits between the recorded origin weights and the destination weights provided by Concourse, claiming losses on the shipments of \$5,108.92 and \$3,248.71, respectively.

Concourse acknowledged that it provided Johnston with batch weight certificates for the first shipment that mistakenly included rail cars that were not shipped by Johnston. Concourse handled the delivery of the second shipment without any similar problems. Concourse offered to settle this dispute for the full amount of the claim

in connection with the first shipment in exchange for Johnston dropping its claim in connection with the second shipment. Johnston refused, and the parties commenced the arbitration of this dispute.

At issue in this case was the interpretation of Old NGFA Grain Trade Rule 4 ("Rule 4").<sup>1</sup> Johnston argued that the right to claim against purported loss in transit against railroads is forfeited if Rule 4.A.3. prevails, because the railroads would not accept a batch weight certificate as proof of loss. Thus, Johnston argued, Rule 4.A.2. takes precedence in such cases.

To the contrary, Concourse contended that Rule 4.A.2. did not apply because the contracts were to be settled with reference to the weights of the shipments at destination. Concourse employs a batch weighing system, which is sufficient for the settlement of contracts under Rule 4.A.3., unless other arrangements regarding weights are made at the time of the trade.

### The Decision

Rule 4.A.3. was incorporated into the NGFA Grain Trade Rules because unit and shuttle trains had become a standard means for grain delivery, and the use of batch weighing systems at receiving terminals had increased as a result. Rule 4.A.3. allows batch weighing for multiple and unit trains billed on one lading, which reduces unloading time and cost and results in a more efficient rail delivery system. For shippers who wish to use first official and/or certified at origin weights to protect themselves from loss of product while it is in-transit, the grain contract should be priced accordingly or the parties involved should agree to such arrangements.

In this case, both parties agreed to use destination

weights for the purpose of settling the contract. Moreover, Concourse's use of batch weight certificates was in accordance with the prevailing NGFA Grain Trade Rules in place at the time of the contract. In connection with the first shipment, however, Concourse admitted that it was at fault when it commingled train cars from other shipments in the batch weights. Therefore, the arbitrators concluded that because of Concourse's batch-weighting mistake, the certified origin weight certificates should be applied in connection with the first shipment. Concerning the second shipment, the arbitrators determined that destination batch weights applied, pursuant to Rule 4.A.3., for the purpose of settling the contract, despite the fact that rail carriers do not accept batch weight certificates as proof of loss.

<sup>1</sup> The contracts in question are governed by the 1998 NGFA Grain Trade Rules. Rule 4 has since been partially restructured as Rule 14.

## The Award

Therefore, it is ordered as follows:

- ▶ Concerning the first shipment, Johnston is awarded the amount of \$5,108.92. plus interest at the rate of 8.5 percent from Jan. 21, 1999 until the amount is paid in full.
- ▶ Johnston's claim for \$3,248.71 in connection with the second shipment is denied.

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

**Gary Jordan**, *Chairman*  
President  
Wright-Lorenz Grain Co. Inc.  
Salina, Kan.

**Cary Pearl**  
Commodity Manager  
Central Soya Co. Inc.  
Decatur, Ill.

**Bert Farrish**  
President  
Columbia Grain Inc.  
Portland, Ore.