



National Grain and Feed Association Arbitration Decision

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November 16, 2000

NGFA Arbitration Case Number 1990

Plaintiff: Bluff Creek AG Service, New York Mills, Minn.

Defendant: Andy Lorence Co., Minneapolis, Minn.

Factual and Procedural Background

Bluff Creek AG Service (Bluff Creek), the plaintiff, requested the entry of a default judgment in the amount of \$3,810.81 against Andy Lorence Co., the defendant.

The judgment was granted for the reasons set forth herein.

Bluff Creek filed its arbitration complaint pursuant to a letter dated June 13, 2000, which was received by the National Grain and Feed Association (NGFA) on June 19, 2000. Bluff Creek's arbitration complaint alleged, among other things, that Andy Lorence Co. had failed to pay for two loads of oats shipped on contracts¹ that existed between the parties.

Each contract provided on the first page under "Special Instructions/Remarks" that it was "[s]ubject to the Rules of the National Grain and Feed Association." While Bluff Creek was not a NGFA member, Andy Lorence Co. was a NGFA Active member in good standing at the time each contract was executed.

Acting upon Bluff Creek's complaint, the NGFA prepared a contract for arbitration and sent it to Bluff Creek for execution. The NGFA's records also showed that defendant Andy Lorence Co. was sent initial notice, and a copy, of Bluff Creek's complaint on July 17, 2000 via Federal Express.

Bluff Creek, as required under the NGFA Arbitration Rules, executed the contract for arbitration and returned it with the arbitration service fee of \$338 to the NGFA, both of which were received by the NGFA on July 28, 2000.

The NGFA then sent a letter, dated Aug. 1, 2000 via Federal Express² to defendant Andy Lorence Co., in which the NGFA requested execution of the contract for arbitration and payment of the arbitration service fee. The NGFA letter contained the following paragraph:

"FAILURE TO COMPLY WITH THE NGFA ARBITRATION RULES AND/OR FAILURE TO FILE ANY RESPONSIVE STATEMENT WITH THE NATIONAL SECRETARY MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU, WHICH THE PLAINTIFF MAY ENFORCE IN A COURT OF LAW. FAILURE TO RESPOND TO THIS NOTICE AND PLAINTIFF'S CLAIM MAY AFFECT YOUR LEGAL RIGHTS." [*Emphasis in original.*]

The NGFA's Aug. 1 letter to Andy Lorence Co. was verified as delivered on Aug. 17, 2000. However, Andy Lorence Co. failed to return an executed copy of the contract for arbitration or the required arbitration service fee.

Bluff Creek submitted copies of the contracts between the parties, along with copies of other records showing shipments of the oats to Andy Lorence Co. In addition, Bluff Creek provided the NGFA with a copy of correspondence sent to it by Andy Lorence Co., in which the defendant indicated the closure of its business.

¹ A copy of the contract, numbered 0002232, submitted by Bluff Creek showed a shipment period of Dec. 17, 1999 to Jan. 31, 2000. Accompanying this document were two invoices for the shipments dated Jan. 10, 2000 and Jan. 14, 2000.

² Federal Express Tracking Number 818905685716.

The Decision

The defendant clearly received notice of the arbitration complaint filed against it. Thus, it appeared that the defendant made a conscious decision not to proceed with NGFA arbitration.

Andy Lorence Co. was a NGFA Active member in good standing at the time the contracts were executed. Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, as follows: *"...If 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."*

Further, Section 3(c)(4) of the NGFA Arbitration Rules provides that: *"A general reference to NGFA rules shall be deemed to incorporate all rules of this Association including the...Trade Rules and Arbitration Rules, and all definitions included in the Trade Rules shall apply under these Arbitration Rules, likewise."*

The language in the parties' contracts, therefore, bound both parties to arbitrate this matter under the NGFA Arbitration Rules, even though the plaintiff was not a member.

There was no indication that the 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 clearly violated the time limits in the rules. 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, Bluff Creek AG Service, against the defendant, Andy Lorence Co.

The Award

Therefore, it is ordered that: Bluff Creek AG Service is awarded a judgment against Andy Lorence Co. in the amount of \$3,810.81.

Dated: Oct. 10, 2000

National Grain and Feed Association

By: **Matthew W. Lisle**
National Secretary