



National Grain and Feed Association Arbitration Decision

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January 10, 2002

Arbitration Case Number 1996

Plaintiff: Garvey Processing Inc., St. Charles, Ill.

Defendant: Heartland Trading Inc., Fitzhugh, Okla.

Statement of the Case

This case involved a contract for the purchase of grain screening pellets between Garvey Processing Inc. ("Garvey") and Heartland Trading Inc. ("Heartland").

On July 30, 1998, Garvey entered into an agreement to sell 80 truckloads (approximately 2,000 tons) of grain screening pellets to Heartland at a price of \$58 per ton, F.O.B. North Kansas City, Mo., between August 1998 and March 1999. Garvey sent Heartland a confirmation of the agreement, dated the same day, to which Heartland did not object. During that seven-month period, 60 loads were picked up by Heartland.

Sometime in July 1999, the parties agreed to extend the delivery date of the contract through November 1999. Garvey sent Heartland a confirmation of the amendment, to which Heartland did not object. During that period, one load was picked up by Heartland.

In December 1999, the contract was amended again by agreement of the parties, and was extended through March 2000. Garvey sent Heartland a confirmation of this amendment. During that time period, another two loads were picked up by Heartland.

In April 2000, the contract was amended a third time by agreement of the parties and extended through September 2000. This last amendment added a \$2-per-ton charge for pick ups of the product that occurred each month after April 2000. Thus, any load picked up in April would be invoiced to Heartland at \$60 per ton, in May at \$62 per ton and so forth, through September 2000, when the price would be \$70 per ton. Again, Garvey sent a confirmation of the contract amendment to Heartland, to which Heartland did not object. Heartland picked up only one last load in April 2000.

By the time the contract expired in September 2000, Heartland had picked up 64 of the 80 loads of grain screening pellets. On Oct. 3, 2000, Garvey invoiced Heartland for the balance due on the 16 loads that had yet to be picked up by Heartland, at the difference between the \$70-per-ton contract price and the market price on Oct. 2, 2000 of \$42 per ton, which totaled \$11,200.

Heartland refused to pay this amount. Instead, Heartland argued that Garvey was unable to supply Heartland with sufficient quantities of grain screening pellets during the time that Heartland could use them. Heartland also claimed that representatives from Garvey orally promised Heartland that Garvey would work something out with Heartland.

The Decision

The arbitrators found that the contract and all three amendments were valid and binding upon the parties. After the contract and the amendments were entered into by the parties, Garvey sent Heartland a confirmation of the contract and each of the amendments. Garvey's confirmations read as follows: "Failure to return signed copy within seven (7) days constitutes acceptance of terms." Since Heartland did not provide any evidence that it objected to any of the confirmations, the arbitrators determined that the confirmations embodied the contract and the amendments to that contract entered into between the parties.

The confirmations also provided that "this contract is subject to the trading rules and arbitration of the National Grain and Feed Association." Thus, the arbitrators determined that they had appropriate jurisdiction to resolve the dispute in this case.

Further, the confirmations provided that Heartland had agreed to buy 80 truckloads of grain screening pellets at the price of \$58 per ton for pick up between August 1998 and March 1999. At the end of that period, Heartland had picked up 60 truckloads of pellets. The parties amended the contract three times, which extended the contract period through September 2000. Each amendment was confirmed in writing by Garvey and sent to Heartland. The last extension added \$2 per ton per month to the contract price. Between March 1999 and September 2000, Heartland picked up only four more loads, for a total of 64 loads.

Despite Heartland's claims concerning Garvey's alleged oral representations, the arbitrators found that the contract required Heartland to purchase a total of 80 truckloads of pellets. By the end of September 2000, Heartland had yet to pick up 16 loads. The contract was silent as to Garvey's rights in the event of Heartland's default. However, NGFA Feed Trade Rule 19(B) provides that, in the event of the buyer's default, the seller could: 1) extend the contract period; 2) sell-out the defaulted portion of the shipment for the buyer's account; or 3) cancel the defaulted portion of the shipment at fair market value based on the day the option was exercised.

In this case, Garvey elected the third option and conducted a wash sale on Oct. 3, 2000. In so doing, Garvey canceled the contract at the price of \$42 per ton, F.O.B. North Kansas City, Mo., which Garvey claimed was the price of the pellets on Oct. 2, 2000. However, in contrast to Garvey's \$42-per-ton market price for grain screening pellets, the arbitrators determined that

FEEDSTUFFS Magazine had listed the market value of grain screening pellets, F.O.B. Kansas City, Mo., on Sept. 28, 2000 at \$45 per ton. Thus, the difference between the contract price and the market price should have been \$25 per ton (\$70 minus \$45) and the quantity remaining on the contract was equal to 400 tons (16 truckloads at 25 tons per truckload). This amounted to \$10,000 that remained due on the contract.

The Award

Therefore, it is ordered that Heartland pay to Garvey the sum of \$10,000.

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

Burt Keefcr, *Chairman*
President and Chief Executive Officer
Cooperative Elevator Co.
Pigeon, Mich.

Bob Linn
Commercial Manager
Bunge Lauhoff Grain Co.
Danville, Ill.

Mark Green
President
Feed Services Inc.
Lubbock, Texas