



National Grain and Feed Association

# Arbitration Decision

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May 1, 2003

## Arbitration Case Number 2027

**Plaintiff:** Cenex Harvest States, Inver Grove Heights, Minn.

**Defendant:** Perdue Shafer Inc., Morden, Manitoba, Canada

### Statement of the Case

This case involved the sale on March 8, 2002 of 80 railcars of U.S. No. 2 yellow corn by Cenex Harvest States (CHS) to Perdue Shafer Inc. (PSI), from April through July 2002.

CHS claimed the trade was based upon two contracts: CHS contract #170763 that specified 40 railcars with 158,050.27 bushels at 35-1/2 cents-per-bushel over the May 2002 Chicago Board of Trade (CBOT) futures contract price for delivery to Lethbridge, Alberta, Canada; and CHS contract #170765 that specified 40 railcars with 150,000 bushels at 30 cents-per-bushel over the July 2002 CBOT price for delivery to Lethbridge, June 1-July 31, 2002. Both contracts submitted by CHS provided "Origin StarLink Certificates to Apply."

PSI contended that the contracts it received from CHS contained no such provisions for StarLink™ certificates, and those contracts remained unsigned. Instead, PSI claimed the trade was based upon two other contracts (PSI contract #500359 and #500360). The PSI contracts were different from the CHS contracts in certain respects, including that they designated delivery f.o.b. Lethbridge, and contained a specific provision for "Certified Grade & Starlink Free Certificates."

On May 21, 2002, CHS tendered 10 rail cars to PSI, which then were tested for StarLink in two, five-car composite samples. According to the U.S. Department of Agriculture's official grain inspection certificates, both sample composites tested negative for StarLink on May 22. On May 29, enroute to Lethbridge, the Canadian Food Inspection Agency (CFIA) detained and retested the 10 railcars for StarLink. Those tests found one composite sample to be positive for StarLink. All five cars on that composite certificate consequently were ordered returned to the United States, and PSI rejected their application to the contract.

CHS claimed that it fulfilled its contractual obligations by successfully clearing Canadian Customs with origin StarLink

certificates. CHS disputed PSI's rejection of the shipment for lack of constructive placement, stating that PSI erroneously sold "guaranteed StarLink-free at destination" after purchasing only "origin StarLink certificates." CHS also argued that Lethbridge was intended as a pricing point only.

PSI countered that Lethbridge was the actual destination under the contract. PSI also referred to NGFA Grain Trade Rule 6, which states in relevant part:

***"Rule 6. Passing of Title as Well as Risk of Loss and/or Damage***

*"Unless otherwise agreed, title, as well as risk of loss and/or damage, passes to the Buyer as follows:...*

*"(B) On delivered contracts:*

*"(1) By rail, when the conveyance is constructively placed or otherwise made available at the Buyer's original destination."*

PSI contended that based upon Grain Trade Rule 6, CHS retained ownership of the five railcars. PSI further argued that CHS assumed the risks of CFIA actions for post-monitoring and sampling for StarLink of corn shipments gaining entry into Canada.

CHS stated that to minimize damages, the parties agreed for it to sell the carloads and to resolve the dispute later. Consequently, on June 6, 2002, CHS sold and diverted the five railcars to Temco at Tacoma, Wash. CHS sold the five railcars containing 19,274 bushels to Temco at \$2.67-per-bushel. In this arbitration proceeding, CHS sought the costs of selling and diverting the cars in question from PSI: \$8,480.56 (representing the price difference of 44 cents-per-bushel) and \$1,650 (representing Canadian Pacific Rail hold charges), for a total of \$10,130.56.

## **The Decision**

Upon review of the contracts provided by both parties, the arbitrators concluded that the contracts indicated Lethbridge, Alberta as the point of delivery. With respect to quality and grade specification requirements, the arbitrators noted that the contracts submitted by CHS in this case indicated "Origin Starlink Certificates to Apply," and PSI's contracts provided "Certified Grade & Starlink-Free Certificates."

The arbitrators determined that the critical issues upon which the parties disagreed involved which party bore responsibility for the rail cars at the time they were detained by the CFIA. The major question of conflict in the contracts was whether the StarLink-free certificates were sold on an origin or delivered basis. The provision in the contracts submitted by CHS included the term "Origin," whereas PSI claimed that the contracts it received from CHS did not contain any such provision.

Upon close consideration of the arguments and documentation submitted by CHS and PSI, and the application of NGFA Grain Trade Rule 6, the arbitrators determined that, because CHS did not meet the requirements of passing of title, the title and risk remained in its hands at the time of the diversion by CFIA. Although StarLink-free certificates were

required for billing purposes, this did not free CHS from delivering the five railcars to Lethbridge, Alberta, for placement and fulfillment of contract.

## **The Award**

The arbitrators concluded that CHS bore the responsibility for the cost of diversion and denied its claim for damages against PSI.

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

**Charles Kemper**, *Chairperson*  
Marketing Manager  
Olsen's Mill Inc.  
Janesville, Wis.

**Ian Carter**  
President  
London Agricultural Commodities Inc.  
London, ON, Canada

**Perry Ford**  
Grain Division Superintendent  
Pernod Ricard USA  
Rushville, Ind.