National Grain and Feed Association
# Arbitration Decision
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July 20, 2006

# Arbitration Case Number 2125

**Plaintiff:** **J.D. Heiskell Holdings LLC d/b/a J.D. Heiskell & Co., Tulare, Calif.**

**Defendant:** **Xavier Avila Dairy, Hanford, Calif.**

## Statement of the Case

J.D. Heiskell Holdings LLC d/b/a J.D. Heiskell and Co. ("Heiskell") entered into four contracts for the sale of feed commodities to Xavier Avila Dairy ("Avila") in the early summer of 2004: two contracts for 1,000 tons of rolled corn each; one contract for 600 tons of canola; and one contract for 600 tons of whole cottonseed.

The contracts provided for monthly deliveries over a 12-month period from October 2004 through September 2005. The contracts also provided for application of the NGFA Grain Trade Rules and NGFA Arbitration Rules.

The parties did not dispute the validity of the contracts in this arbitration case. In fact, these contracts materially were on schedule for the first four months of the delivery period (October 2004 through January 2005).

On Jan. 19, 2005, Xavier Avila sold the Avila Dairy. A series of communications followed during late January and early February 2005 between Avila and Heiskell regarding the sale of Avila's dairy and the disposition of the contracts. In their written arguments submitted in this arbitration case, the parties disputed what was said during those communications. While the exact content of those communications was in dispute, the arbitrators clearly could determine that the crux of the communications involved the status of the open balances on the contracts and, specifically, Heiskell's concerns that Avila would default on those balances.

In this case, Heiskell argued that Avila's default on the contracts was imminent following the sale of Avila's dairy. Relying upon NGFA Grain Trade Rule 28, Heiskell cancelled the open balances on all four contracts and claimed $56,270.83 in damages against Avila.

Avila argued that it was not in default at the time that Heiskell cancelled the contracts. Avila denied Heiskell's allegation that Avila's default was imminent, and Avila contended that it eventually would have accepted the deliveries that remained under the contracts at an alternative location.

## The Decision

Based upon NGFA Grain Trade Rule 28(B) *[Buyer's Non-Performance]*, the arbitrators decided that Heiskell was entitled to damages.

The arbitrators determined that after Avila sold the dairy, Avila did not attempt a resolution with Heiskell regarding the contract balances that remained open. The arbitrators noted that Heiskell contacted Avila in an effort to reach a resolution, and that Heiskell provided notice that it would cancel the contracts when no resolution was reached.

The arbitrators acknowledged that, because the parties differed in their arguments regarding the specifics of their communications, the exact content of those communications was unclear. The arbitrators concluded, however, that it was clear that Heiskell took all the initiative in communicating and attempting to reach a resolution between the parties, and that Avila made no efforts toward reaching a resolution. The arbitrators decided that Heiskell consequently was entitled to proceed with the alternatives provided in NGFA Grain Trade Rule 28 for buyer's non-performance on a contract.

## The Award

The arbitrators found that calculating damages in this case was complicated by various factors, including the following: 1) Heiskell's cancellation of the contracts appeared to exceed those portions of the contracts in default that Heiskell was entitled to cancel; 2) the stated f.o.b. and delivery points did not reconcile completely; and 3) the documentation provided did not correspond fully to the charges claimed.

The arbitrators noted that NGFA Grain Trade Rule 28 provides that partial non-performance on a contract is not grounds for cancellation of the entire contract. The arbitrators determined that in this case, Heiskell canceled the entire open balances in anticipation of Avila's default. The arbitrators recognized that waiting until actual default by a party poses significant and avoidable logistical issues and costs to the other party. Under certain circumstances, such as those provided in NGFA Grain Trade Rule 28, an anticipatory cancellation on a contract is appropriate if the situation warrants. The arbitrators determined that in this specific case, a partial cancellation of the contract was justified. However, the arbitrators concluded that Heiskell was not entitled to cancel the entire open balances on the contracts.

The arbitrators observed that in the invoices provided in support of Heiskell's claims for damages on the canola and whole cottonseed contracts, the quantities stated did not correspond precisely with the contract quantities that were appropriate for cancellation. The arbitrators also noted that the alternative cancellation prices provided in the invoices were not explained sufficiently. With respect to cancellation on the two corn contracts, the arbitrators noted that Heiskell claimed that one of the contracts was open in its entirety, and that Heiskell had been applying deliveries to the contract priced at $12.50-per-ton higher. However, the arbitrators observed that in its calculation of damages, Heiskell divided the open balance between the two contracts evenly. The arbitrators further noted that additional documentation to clarify the inconsistency was not provided when the question was raised in the parties' arguments.

Also regarding cancellation of the contracts, the arbitrators noted that Heiskell provided documentation from a feed mill (not involved in this case), which referred to a market value for rolled corn of $112 per ton. But the arbitrators observed that the calculation spreadsheet provided by Heiskell relied upon a market value of $95.50 per ton. The arbitrators further determined that Heiskell did not provide documentation to adequately reconcile the f.o.b. and delivered values, or to sufficiently explain transportation and other costs claimed.

The arbitrators consequently concluded that they had limited information upon which to verify Heiskell's calculations of damages. Based upon this limited information and their determination that Heiskell was not entitled to cancellation of the entire open balances on the contracts, the arbitrators concluded that Heiskell was entitled to damages relating to a two-month interval of the eight months that remained open under the contracts, which the arbitrators calculated at $10,000. The arbitrators' calculation of damages also reflected their above-stated determinations concerning values claimed under the corn contracts.

Therefore, the arbitrators awarded $10,000 to Heiskell as damages in this case.

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

**Ben Baer**, *Chair*
President
Livestock Nutrition Center
Memphis, Tenn.

**Greg Eide**
Manager
Monica Elevator Co.
Princeville, Ill.

**Joseph Kerns**
Director of Purchasing
Iowa Select Farms
Iowa Falls, Iowa