National Grain and Feed Association

Arbitration Decision

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February 15, 2007

Arbitration Case Number 2142

Plaintiff: **Zayne Hawkins, Merigold, Miss.**

Defendant: **Bunge North America Inc., Gunnison, Miss.**

Statement of the Case

This case involved a dispute over delivery obligations involving the sale of soybeans.

The plaintiff, Zayne Hawkins ("Hawkins"), stated that on Aug. 19, 2003, he and the defendant, Bunge North America ("Bunge"), contracted for the sale of 20,000 bushels of soybeans for delivery Oct. 1-Nov. 30, 2003 to Bunge's facility at Hurricane Point, Miss., at the market price less 10 cents per bushel (contract number 13022).

Hawkins claimed that he fulfilled the contract through three separate deliveries on Sept. 11 (5,000 bushels at $6.11 per bushel), Sept. 16 (5,000 bushels at $6.0125 per bushel), and Oct. 10 (10,000 bushels at $7.1925 per bushel). In addition, Hawkins claimed that because of an "in-exactitude" of truckload size, he delivered an additional 305.32 bushels of soybeans to Bunge's Hurricane Point location.

For the total 20,305.32 bushels delivered, Hawkins claimed he was due $125,214.50 after deductions for taxes, damage and test weights. Hawkins argued that Bunge wrongfully deducted $21,600.63 from the amount due because of certain allegedly unfilled soybean contracts for which Hawkins claimed he was not responsible.

Bunge stated that it had been buying grain from Hawkins and Hawkins' father since 2001-02. According to Bunge, four soybean contracts were involved in this dispute. Bunge claimed Hawkins' father entered into two hedge-to-arrive ("HTA") contracts for 5,000 bushels for Hawkins' account on April 29 and May 12, 2003, for delivery before Sept. 30, 2003 (contract numbers 12854 and 12865). Bunge also claimed Hawkins' father by telephone on Aug. 27, 2003 entered into a priced contract for Hawkins' account for 5,000 bushels of soybeans at $5.76 for November delivery (contract number 13062). Bunge said that during this telephone call, Hawkins' father also priced the two HTA contracts. Bunge said it mailed the pricing confirmations for the HTA contracts directly to Hawkins. Bunge issued payment to Hawkins totaling $109,294.33, which included the deduction of $21,000.63 as the market difference for the outstanding portions of the contracts to which Bunge claimed it was due.

Hawkins denied he was responsible for the two HTA contracts, and disputed that his father had authority to act on his behalf. In addition to the $21,000.63 that represented the amount of the offset, Hawkins requested $48,999.37 in punitive damages against Bunge.

The Decision

On the critical question of whether Hawkins' father had apparent or actual authority to act on Hawkins' behalf, the arbitrators closely examined the documents and arguments submitted by the parties.

Bunge claimed Hawkins and his father commonly conducted business transactions on each other's behalf, including in the delivery of soybeans for application to each other's contracts. Bunge produced evidence that reflected deliveries to Bunge by Hawkins' father for application to contracts by Hawkins. Bunge also produced evidence indicating that Hawkins' father acted on Hawkins' behalf on various occasions, including in connection with soybean prices for the account of contracts with Hawkins. Further, the arbitrators noted Hawkins' admission, in his sworn statement produced with his first argument, that his father was his employee. In addition, it was noted that the contract dated Aug. 19 resulted from a meeting on the previous day with both Hawkins and his father at Bunge's Hurricane Point facility.

The arbitrators determined, based upon the convincing weight of the evidence, that Hawkins' father had apparent, if not actual, authority to bind Hawkins to the contracts in dispute. The arbitrators also concluded that Bunge properly provided confirmations of those contracts to Hawkins, and that each contract remained valid. Further, the arbitrators decided that Bunge properly cancelled the unfilled portions of the outstanding contracts at fair market value upon Hawkins' default.

The Award

Therefore, the arbitrators denied Hawkins' claims for the $21,000.63 offset and punitive damages.

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

Michael Conklin, *Chair*
General Manager & Chief Executive Officer
Cooperative Agricultural Producers Inc.
Rosalia, Wash.

Gene Legg
General Manager
Dumas Co-op Elevators
Dumas, Texas

Warren Skaggs
Merchandising Manager-CGB Southwest
Consolidated Grain & Barge Co.
Van Buren, Ark.