



National Grain and Feed Association Arbitration Decision

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March 6, 2015

CASE NUMBER 2591

**PLAINTIFFS: WALTER H. VAN BUREN, VERNE VAN BUREN AND VAN BUREN FARMS,
ROYALTON, NY**

DEFENDANT: CARGILL, INCORPORATED, MINNEAPOLIS, MN

STATEMENT OF THE CASE

The plaintiffs, Walter H. Van Buren, Verne Van Buren and Van Buren Farms (collectively, “Van Burens”), originally filed suit against the defendant, Cargill, Incorporated (“Cargill”), for (1) breach of contract and (2) personal injury claims in the State of New York Supreme Court for Niagara County. The case was subsequently removed to federal court. In September 2011, the Hon. William Skretny, chief judge of the U.S. District Court for the Western District of New York, ordered that all of Van Burens’ claims, both those for contractual and personal injury damages, be submitted to NGFA Arbitration for adjudication.

There was some disagreement between the parties about the specific progression of events; however, the arbitrators noted that on certain key facts the parties were consistent:

- The Van Burens owned and operated a hay production business that encompassed about 2,700 acres in western New York state. (The Van Burens’ overall business included other production ventures, which the arbitrators determined were not relevant to the current case.)
- The Van Burens’ business has been in operation for approximately 25 years. The Van Burens sell and transport hay “all over the country.” Annual revenue from Van Burens’ sale of hay exceeded \$370,000 and \$519,000 for the years 2008 and 2010, respectively, according to tax records produced by the Van Burens in the case.
- Prior to 2009, the Van Burens were longstanding customers of Cargill and had purchased various products from Cargill. During the hay production season of 2009, the Van Burens were advised by a Cargill representative that they should switch from one product, *Storage Mate*, to another product, *Promote Bale Green Liquid Organic Acid (Bale Green)*. The Van Burens apparently used the *Storage Mate* until it was consumed and then switched to the *Bale Green* for the duration of the season.
- On October 26, 2009, one of the plaintiffs, Walter Van Buren, was taken to the emergency room at Erie County Medical Center for treatment of physical injuries.

The arbitrators identified the following key issues in this case:

- 1) Van Burens – Breach of Contract Claim: The Van Burens’ claim for contractual damages arises from their purchase and use of Cargill’s *Bale Green* product as a hay preservative. The Van Burens stated that they used the *Bale Green* product in accordance with specific directions provided by Cargill’s representative – although the Van Burens agreed that they did not use the product in accordance with the directions on the product label.

The Van Burens’ alleged damages for the breach of contract claim centered around the loss of income they attributed to decreased quality in the hay that resulted from use of the *Bale Green* product.

The Van Burens calculated this loss at \$201,600.

- 2) Van Burens – Personal Injury Claim: The Van Burens also claimed damages for personal injuries and economic losses arising from Walter Van Buren’s accident in October 2009.

The Van Burens claimed that on Oct. 26, 2009, several bales of hay, each weighing between 800 and 1,000 pounds, fell upon Walter Van Buren from a height of approximately 18 feet. They alleged that because of this accident, Walter Van Buren, who was 85-years old at the time, suffered severe physical injuries, including several bone fractures and other injuries attributable to spinal fractures. After the initial treatment and recovery, Walter Van Buren continued to suffer complications, according to the plaintiffs.

The Van Burens’ personal injury claims were based upon the argument that use of the *Bale Green* product caused damage to the hay crop that was not only “nutritional” in nature – but that the *Bale Green* product also caused “structural” damage to the hay. According to the plaintiffs, this alleged structural damage caused the hay to spontaneously collapse upon, and injure, Walter Van Buren.

The Van Burens claimed that as a result of this damage, Walter Van Buren has endured, and will continue to experience, significant pain and suffering. The Van Burens also claimed damages because Walter Van Buren was consequently unable to return to work on the farm after the accident and the Van Burens were required to hire additional labor to make up for his reduced abilities.

The plaintiffs sought \$1.8 million in damages for the personal injury claim, including compensation for Walter Van Buren’s pain and suffering.

3. Cargill – Claim for Payment for Product: Cargill asserted that the Van Burens failed to pay for the product invoiced on September 21, 2009.

Cargill claimed the amount due was \$2,156.50.

THE DECISION

The arbitrators noted that this case was not a typical dispute about the price or acceptability of an agricultural commodity under the terms of a contract. The Van Burens' claims encompassed much more. Consequently, the arbitrators carefully considered the many particular aspects of this case.

Upon review of the claims, affidavits and documents submitted by both the Van Burens and Cargill, the arbitrators agreed that the injuries sustained by Walter Van Buren were severe and tragic. Mr. Van Buren has experienced unfortunate pain and suffering. Further, the Van Burens business has apparently suffered actual losses due to several possible causes, which may have been associated with the use or misuse of the product in question. The arbitrators sympathized with Walter Van Buren; however, they concluded that sympathy alone was not a basis for an award in the Van Burens' favor.

The arbitrators noted a fundamental disagreement between the parties regarding the role played by the Cargill representative. It appeared to the arbitrators that the Cargill representative may – or may not – have been “aggressive” in representing the *Bale Green* product. The arbitrators determined that this presented a clearly “*he said – she said*” situation.

The arbitrators relied upon several conclusions in their decision:

- 1) Improper use of the product: Both the Van Burens and Cargill acknowledged the *Bale Green* product was not used as directed and intended according to the instructions on the label on the product. The arbitrators determined that this was the reasonable, and more likely, explanation of any loss to the quality of the hay produced.
- 2) Sophisticated producers: The Van Burens, by all accounts, are a sophisticated business entity engaged in the production and distribution of hay. The parties' arguments described the Van Burens' business in great detail, including how the Van Burens have harvested, tested and distributed great quantities of hay for many years. The sophistication of the machinery and methods customarily used by the Van Burens was also demonstrated in great detail. The arbitrators weighed heavily in their decision that the Van Burens failed to follow directions on the product labeling.
- 3) “Structural” damage: This was the plaintiffs' central argument for the cause of the hay collapse that was the basis for the Van Burens' personal injury claims. The arbitrators closely examined the evidence, documentation and arguments presented by the parties on whether the *Bale Green* product had caused “structural” damage that would have resulted in a collapse of the hay as alleged by the Van Burens. The arbitrators concluded that the Van Burens did not provide credible evidence to support this assertion.
- 4) Sequence of events: The arbitrators determined that the sequence of events surrounding the accident suffered by Walter Van Buren were at best murky as they were presented by the Van Burens. The arbitrators agreed that it was likely the hay fell on him; however, what caused the hay to collapse was entirely unclear. The claim that Cargill's product caused “structural” damage to the hay, which then caused the hay to collapse upon Mr. Van Buren, was entirely unsubstantiated.

The arbitrators further concluded that the claims by the Van Burens regarding the course of dealings between the parties regarding the use of the *Bale Green* product were muddled and unsubstantiated. Cargill's account of what transpired between the parties was better supported and appeared more plausible. In particular, the arbitrators carefully reviewed the parties' arguments regarding a series of notes on a scratch-pad that the Van Burens argued were written by the Cargill representative. Although the arbitrators did not purport to be experts in the area of handwriting, the explanation presented by Cargill was more plausible and reasonable than the explanation offered by the Van Burens.

5) Payment for the product: Cargill's claim for payment on the product was substantiated.

THE AWARD

The arbitrators ruled in favor of Cargill. The Van Burens are ordered to pay Cargill for the outstanding invoice in the amount of \$2,156.50.

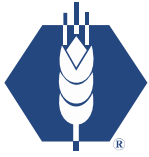
Decided: June 20, 2013

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

Matthew Gibson, Chair
VP, Sales & Tech Services
Lifeline Foods LLC
St. Joseph, MO

John Brammeier
Grain Division Manager
Co-Alliance LLP
Avon, ID

Steve Dennis
Grain Department Manager
Evergreen FS Inc.
Bloomington, IL



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March 6, 2015

APPEAL CASE NUMBER 2591

APPELLANTS/PLAINTIFFS: **WALTER H. VAN BUREN, VERNE VAN BUREN AND VAN BUREN FARMS, ROYALTON, NY**

APPELLEE/DEFENDANT: **CARGILL, INCORPORATED, MINNEAPOLIS, MN**

DECISION OF THE APPEALS COMMITTEE
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This case was originally decided in favor of the defendant, Cargill, Incorporated (Cargill). The plaintiffs, Walter H. Van Buren, Verne Van Buren and Van Buren Farms (collectively, the “Van Burens”) subsequently appealed the decision and also requested oral argument before the Arbitration Appeals Committee.

The Arbitration Appeals Committee individually and collectively reviewed all the arguments and supporting exhibits in the original case file of Arbitration Case 2591, along with the Statement of Case, the Decision, and Award of the original Arbitration Committee. The Appeals Committee reviewed the briefs of the appellant and appellee filed in this case, and also convened to hear the presentation of oral arguments by the parties. The case record is substantial and thorough. In addition, the Committee was aided by the fact that both parties were very ably represented in a complex matter.

The statement of the case as presented by the original Arbitration Committee details the significant facts of the case. In summary, however, the plaintiffs used a hay treatment product (“*Bale Green*”) that was manufactured and recommended by Cargill. The Van Burens argued that after application of the *Bale Green* in accordance with instructions allegedly provided by a Cargill representative, stacked bales of hay collapsed on Walter Van Buren causing serious personal injury. The plaintiffs alleged that product defects and/or erroneous application instructions caused the hay bales to weaken and become unstable, causing the collapse of the bale stack. In addition to claims relating to Walter Van Buren’s personal injuries, the plaintiffs seek damages for lost product quality. Cargill seeks damages for unpaid invoices related to the purchased *Bale Green*.

Many of the material facts are disputed, requiring the Committee to focus on the fact that the plaintiffs bear the burden of proof. Clearly, Walter Van Buren was seriously injured when the stacked hay bales fell on him. However, much less clear is what factors caused instability in the bale stack and the ultimate collapse. Accordingly, the Committee needed to ascertain whether there was adequate support in the case record to conclude that 1) the product was defective *and* the defects in the product caused the hay to weaken sufficiently to result in the collapse of the bale stack; or 2) misapplication of the product caused the hay to weaken sufficiently to result in the collapse of the bale stack *and* the misapplication was the result of following application instructions supplied by a Cargill representative. Although the plaintiffs’ claim for product loss based upon quality deterioration was much less than the personal injuries claim, the Committee likewise needed to determine if the evidence was sufficient to conclude

that the quality loss resulted from defects in the Bale Green product and/or from Cargill's application instructions.

Given the facts that are disputed as well as ample evidence of potential other contributing causes, the Arbitration Appeals Committee was not able to conclude, based upon a preponderance of the evidence, that the defendant's product or conduct resulted in the plaintiffs' losses related to personal injury or quality loss.

The Arbitration Appeals Committee consequently affirms the Decision and Award of the original Arbitration Committee.

Decided: February 12, 2015

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

Roger Krueger, *Chair*
Senior Vice President, Grain
South Dakota Wheat Growers
Association
Aberdeen, SD

Jeff Berdan
Ruminant and Forage Specialist
Purina Animal Nutrition LLC
New Ulm, MN

Joan Maclin
Sr. VP & General Counsel
The Scoular Company
Minneapolis, MN

Steven Nail
President & CEO
Farmers Grain Terminal Inc.
Greenville, MS

Steve Young
Grain Merchandiser
Grainland Cooperative
Holyoke, CO