



# National Grain and Feed Association Arbitration Decision

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February 19, 2025

## CASE NUMBER 3049

**PLAINTIFF: HANNEBAUM GRAIN CO., SALINA, KS**

**DEFENDANT: MIKE HYNEK, GUIDE ROCK, NE**

### STATEMENT OF THE CASE

This case involves the following contracts between the Plaintiff, Hannebaum Grain Co. (Hannebaum), and the Defendant, Mike Hynek (Hynek):

- Contract 51637 for 20,000.00 bushels of YC at \$5.93 FOB Guide Rock, NE for January-March 2022 shipment. Written on December 3, 2021.
- Contract 51645 for 50,000.00 bushels of YC at \$5.97 FOB Guide Rock, NE for January-March 2022 shipment. Written on December 16, 2021.

The sequence of events leading to the dispute are as follows:

- December 3, 2021 - Hannebaum purchased contract 51637 from Hynek
- December 6, 2021 - Hynek signed a master contract agreement with Hannebaum
- December 16, 2021 - Hannebaum purchased contract 51645 from Hynek
- Due to unforeseen trucking-related issues, Hannebaum was unable to execute on the FOB contracts. Various circumstances caused the grain markets to firm up and trucks became short. These circumstances included the Russia/Ukraine war; a mild winter in Nebraska resulting in reduced need for road salt and fewer back hauls; inflation coming out of the pandemic; skyrocketing fuel prices; and a shortage of truck drivers.
- January 21, 2022 - Hynek's broker reached out to Hannebaum's merchandiser about selling more corn FOB Hynek's farm.
- Throughout January 2022 - Hannebaum moved 7,342.14 bushels for Hynek.
- Hannebaum agreed to pay Hynek storage on the unshipped corn from February 15 through March 31, 2022, if Hynek agreed to start shipping the corn on April 1, 2022.
- March 30, 2022 - Hannebaum sold 50,000 bushels to a feed yard in Red Cloud, NE to try to complete the contracts, but Hynek refused to load the trucks.
- Hannebaum consequently refused to pay Hynek for the \$24,626.76 worth of corn.
- Throughout March 2022 - Hannebaum moved 8,404.98 bushels from Hynek.

- April 8, 2022 - through his broker, Hynek communicated he would not be able to load the trucks.
- April 20, 2022 - through his broker, Hynek communicated again he was too busy to load trucks.
- April 28, 2022 - Hynek informed Hannebaum's merchandiser he would not load any trucks because Hannebaum was late on its contracts.
- April 29, 2022 - Hannebaum's merchandiser reached out to Hynek again about loading of the trucks; Hynek declined stating he wanted payment for loads hauled in March.
- May 5, 2022 - Hannebaum's president had a conversation with Hynek's broker, and it was stated Hynek would not load any trucks before June 1, 2022
- May 13, 2022 - Hannebaum's president reached out to Hynek's broker and another colleague from Hynek's brokerage firm to notify them Hannebaum would be sending a demand letter to Hynek on May 16, 2022, to start loading corn out on June 13, 2022.
- May 16, 2022 - Hannebaum sent a demand letter to Hynek to complete the contracts.
- May 19, 2022 - Hannebaum's president sent another email to Hynek's brokers to let them know Hannebaum had not received any communication from Hynek and to see if they had heard from him.
- May 26, 2022 - after receiving the demand letter from Hannebaum, Hynek's counsel sent a letter to Hannebaum's council stating that Hannebaum is the party that breached the contract, not Hynek.
- June 2, 2022 - Hannebaum sent a settlement offer to Hynek to buy back all bushels of corn remaining under these contracts.
- June 6, 2022 - Hynek requested a clarification on the offer from Hannebaum.
- Hynek rejected Hannebaum's offer and responded with a counteroffer.
- June 8, 2022 - Hannebaum rejected Hynek's counteroffer.
- June 10, 2022 - After no further response from Hynek, Hannebaum executed a trade to wash out of the purchase contract with Hynek and sent an invoice to Hynek.

The main arguments by Hannebaum are as follows:

- Due to the unforeseen circumstances stated above, Hannebaum was unable to find trucks to execute on the above contracts with Hynek. When Hannebaum was able to get trucks, Hynek was unwilling to load those trucks because it was out of the timeframe of the original contract. The balance on contract 51637 is 4,162.86 bushels, and the balance on contract 51645 is 50,000.00 bushels. Hannebaum is consequently claiming Hynek is in breach of the original contracts and owes Hannebaum \$103,396.39 in damages.

- The signed contracts by Hynek state:

When shipments are not made according to contract, we reserve the right to extend time of shipment, cancel or buy in the grain for the Seller's account, unless at Seller's request previous to the expiration of limit of time of shipment, other arrangements are made covering Seller's failure to make shipment within specified time of contract."

- The master contract signed by both parties also states:

Buyer has the right, without penalty, to delay the time for accepting delivery and making payments under any Contract if such delay is caused by government regulation or actions, labor strikes, riots, insurrection, freight embargoes, transportation delays or other causes not within the Buyer's control. In the event of a delay, Buyer shall accept delivery and make payments under the Contract(s) as soon as practicable after the cause for delay has ceased.

- The master contract signed by both parties also states:

If Customer fails to perform any of the terms and conditions of any Contract with Buyer, then Buyer reserves the right to deem Customer in default of that particular Contract and in default of any other Contracts between Buyer and Customer.

The main arguments by Hynek are as follows:

- Hannebaum breached the contract by not picking up the corn by the end of March, and Hynek is not liable for the damages Hannebaum is claiming.
- Hannebaum only picked up 7,432.14 bushels in January, none in February, and 8,404.98 bushels in March.
- Hynek pleaded for more trucks on multiple occasions prior to the end of March but never received them.
- Hannebaum never provided verbal or written notice that it would not complete the contracts within their specifications.
- Hannebaum's claim of a truck shortage is untrue because Hynek sold 40,000 bushels to another grain buyer and it was moved in a couple of days.
- Hynek also interviewed several local trucking companies that said they could have hauled the grain at that time.
- Hynek is claiming \$14,262.76 in damages.

<b>THE DECISION</b>
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There is no question that Hannebaum was late in picking up the corn from Hynek, but Hannebaum is not in breach of contract due to the terms of the signed contracts and master contract cited above.

Based upon a close review of the facts, arguments and evidence provided by the parties in this case, the arbitrators reached the following conclusions:

Hannebaum made continuous efforts via text, phone calls, and emails to either Hynek directly or Hynek's broker to move the corn, but Hynek continued to state he did not have time to move the corn.

Because of the continued communication with Hynek and Hynek's broker, Hannebaum understood that it would still be able to move the corn, so Hannebaum did not cancel the contracts.

Hannebaum was informed by Hynek’s broker not to send an updated contract until Hynek agreed on a date for loading.

Hannebaum comfortably communicated with Hynek’s broker as the mediator between Hynek and Hannebaum, as it was the broker who originally put the two parties in contact and was also the only one that Hynek would respond to.

As stated in the counter claim from Hynek, Hynek’s broker “provided marketing services for Hynek.”

As stated in the affidavit of Hynek, Hynek’s broker is “a grain marketer that I work with.”

Hannebaum is owed \$103,395.39 from Hynek for default on the corn contracts, calculated as follows.

- Unfilled bushels on contract 51637 (4,162.86 at \$8.40 vs. \$5.93) = \$10,282.26
- Unfilled bushels on contract 51645 (50,000.00 at \$8.40 vs. \$5.97) = \$121,500.00
- Unpaid amount for 5,387.14 bushels applied to contract 51637 = -\$24,626.76
- Carry payable on bushels not hauled after 2/15/22 and loads hauled after 2/15/22 = -\$3,759.11
- Net payable to Hannebaum = \$103,396.39

The committee’s decision is unanimous.

<b>THE AWARD</b>
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Hannebaum Grain Co. is awarded \$103,396.39 from Mike Hynek. Interest will not be awarded in this case.

Decided: July 23, 2024

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

**Kevin Green**, *Chair*  
Operations Manager  
Farmers Grain Terminal, Inc.  
Greenville, MS

**Bryce Hunsley**  
Regional Trading Manager  
ADM  
Havana, IL

**Daniel Wilkins**  
Regional Grain Manager  
Superior Ag  
Huntingburg, IN