



National Grain and Feed Association Arbitration Decision

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August 20, 2025

CASE NUMBER 3050

PLAINTIFF: COLUMBIA GRAIN INTERNATIONAL, LLC, GREAT FALLS, MONTANA

DEFENDANT: DAKOTA DRY BEAN, INC., GRAND FORKS, NORTH DAKOTA

STATEMENT OF THE CASE

Columbia Grain International, LLC (CGI) entered into two contracts to sell #2 Yellow Peas to Dakota Dry Bean, Inc. (DDB).

First contract

By email on August 24, 2021, CGI sent the following offer to DDB:

*150,000 bushels Canadian peas
\$16.10 for April – July
Min 24 protein
0.25 discount down for 1% below 24
0.10 premium up for ½% above 24
Contract average*

DDB responded that same day, “Thanks – also please note yellow peas and option to take JFM at \$15.74”.

Also on the same day, CGI issued contract confirmation #1034373 with the following terms:

*Commodity: Whole Yellow Peas – Canadian
Grade: #2
Quantity: 150000.00 BU
Price: \$16.1000/BU
Shipment Period: Start: Apr 01, 2022 End: Jul 31, 2022
Transportation Mode: Rail ASM
Weights to Govern: Official Loading
Grades to Govern: Official Loading
Del.Basis/Fob Point: Delivered Devils Lake ND
Payment Terms: Net 30 days
Contract Notes:
Additional Notes: 150,000 bushels Canadian peas
\$16.10 for April – July*

*JFM option at \$15.75 with 21 day notice of needed shipping date
Min 24 protein
0.25 discount down for 1% below 24
0.10 premium up for ½% above 24
Contract average
Trade Rules to Govern: NATIONAL GRAIN & FEED ASSOCIATION*

DDB issued confirmation #CRA011001089 with the following terms (the date of original issue is uncertain from the materials presented in the case; DDB ultimately resent the confirmation and it was signed by CGI on October 12, 2021):

*Commodity: Yellow Pea
Quantity/Units: 90,000 Cwt
Price: \$26.833330
Delivered: Delivered-Crary/Lakeview
Shipment Period: 4-1-2022 – 7-31-2022
Weights to Govern: Destination
Grades to Govern: Destination
Grade: US #2 YELLOW PEA
Crop Year: 2021
Special Instructions:
Title to the grain shall pass to the Buyer at the time of delivery
13.5% Maximum Moisture and US#2 Non-Genetically Modified Organisms
Yellow Peas. Freight: Delivered
...
Delivery: Buyer's Call. ...
...*

Second contract

On August 30, 2021, DDB reached out by email stating, “I could probably do another 100,000 bushels if you are interested. Same terms.”

CGI responded on the same day:

... Would be .15 premium to previous contract.

*100,000 bushels Canadian peas
\$16.25 for April-July
\$15.90
Min 24 protein
0.25 discount down for 1% below 24
0.10 premium up for ½% above 24
Contract average*

Let me know

DDB followed up immediately stating, “*Let’s go ahead and book it.*”

CGI issued contract confirmation #1034426 also on the same day with the following terms:

Commodity: Whole Yellow Peas – Canadian

Grade: #2

Quantity: 100000.00 BU

Price: \$15.9000/BU

Shipment Period: Start: Jan 01, 2022 End: Jun 30, 2022

Transportation Mode: Rail ASM

Weights to Govern: Official Loading

Grades to Govern: Official Loading

Del.Basis/Fob Point: Delivered Devils Lake ND

Payment Terms: Net 30 days

Contract Notes:

Additional Notes: 100,000 bushels Canadian peas

\$16.25 for April – July

\$15.90

Min 24 protein

0.25 discount down for 1% below 24

0.10 premium up for ½% above 24

Contract average

Trade Rules to Govern: NATIONAL GRAIN & FEED ASSOCIATION

DDB issued contract confirmation #CRA011001103 with the following terms (the date of original issue is uncertain from the materials presented in the case; DDB ultimately resent the confirmation and it was signed by CGI on October 12, 2021):

Commodity: Yellow Pea

Quantity/Units: 60,000 Cwt

Price: \$26.50000

Delivered: Delivered-Crary/Lakeview

Shipment Period: 1/1/2022 – 6/30/2022

Weights to Govern: Destination

Grades to Govern: Destination

Grade: US #2 YELLOW PEA

Crop Year: 2021

Special Instructions:

Title to the grain shall pass to the Buyer at the time of delivery

13.5% Maximum Moisture and US#2 Non-Genetically Modified Organisms

Yellow Peas. Freight: Delivered

...

Delivery: Buyer’s Call. ...

...

Neither party's confirmations agree on any aspect of the trade other than price, quantity, and delivery window. Neither party disputed the discrepancies between the two confirmations (typically done within 24 hours) until this arbitration case. Signatures for the DDB confirmations were received from a merchant for CGI on October 12, 2021. No signatures were received for the CGI confirmations from DDB.

There is a claim and counterclaim presented in this case.

CGI claims that the first contract (CGI confirmation 1034373/ DDB confirmation CRA011001089) was cancelled prematurely and not in compliance with NGFA's Trade Rules, as DDB cancelled the contract on July 8, 2022, rather than waiting until July 31, 2022, which was the end of the delivery period. CGI seeks damages pursuant to NGFA Grain Trade Rule 28(B)(3) [Failure to Perform]. CGI argues that its contract confirmation supersedes the DDB confirmation pursuant to NGFA Grain Trade Rule 3, as no errors or omissions were asserted by DDB in response to CGI's confirmation. CGI also claims its contract confirmation contained a clause about performance subject to rail availability, and the terms of its confirmation stipulates rail delivery. CGI's main arguments are that rail cars were unavailable for most of the delivery period; DDB was unwilling to pay for trucks above contract price; and the contract was cancelled prematurely and without sufficient notice by DDB. CGI is requesting damages of \$730,166.13, plus interest from the invoice date of July 22, 2022, and arbitration fees of \$10,952.49. CGI makes no claim for damages on the second contract (CGI confirmation 1034426/DDB confirmation CRA011001103) as CGI views this contract was fully performed upon.

In its counterclaim, DDB claims it was the damaged party and not CGI. DDB's confirmations were signed by CGI, and DDB argues its confirmations governed the trades. DDB argues since it did not sign CGI's confirmations and it is not an NGFA member, NGFA Grain Trade Rule 3 [Confirmation of Contracts] is not applicable, and DDB had no reason to challenge CGI's confirmations as DDB's confirmations were signed and governed the trade. DDB argues it was proper to cancel the first contract (CGI # 1034373 & DDB #CRA011001089) based upon the lack of consistent deliveries until that point and DDB's determination there was no chance for CGI to meet delivery terms by the delivery due date of July 31, 2022. Based on DDB's contract confirmation, DDB's argument is that CGI failed to meet multiple delivery schedules via rail and would ship trucks only at an extra cost. Due to lack of delivery, DDB was forced to "buy-in" peas throughout the terms of both contracts, which caused DDB to incur damages and provides the basis for DDB's counterclaim. DDB claims it tried to formally work through the delivery issues starting on June 27, 2022, and it finally terminated both contracts on July 8, 2022, after no progress was made to resolve the delivery issues. DDB's counterclaim is for a total of \$1,083,941.99, consisting of "buy-in" costs of \$104,807.86, plus \$979,134.13 for opportunity loss of income for two separate USDA tenders.

THE DECISION

After extensive deliberations and review of the materials provided, the arbitrators do not find wholly in favor of either the claims or counterclaims presented by the parties in this case. The dispute between

DDB and CGI revolves around conflicting contracts and poor communication in general, with both parties failing to notify each other of discrepancies between their confirmations.

The confirmations submitted by CGI provided for “*Rail*” as the mode of transportation for delivery. DDB’s confirmations state that freight is to be simply delivered without specifying a preferred mode of transportation. Emails submitted in the case indicated DDB’s preferred mode of transportation type as “*preferred truck but could do rail*”, with a follow up email from CGI claiming, “*Truck/Rail Sellers option (likely mostly rail)*.” Also, DDB’s confirmations stipulate “*Buyer’s Call*” – which is not present in CGI’s confirmations nor does it appear to be discussed in the emails provided wherein DDB does indicate its preference of transportation type and pace of delivery.

The arbitrators note CGI disputes that buyers’ call applies in this dispute, yet CGI did not initiate contact or start shipping plans until hearing from DDB three months (halfway) through the second contract. On the morning of March 31, 2022, DDB provided CGI with a schedule for delivery that appeared to encompass both contracts. Emails sent on March 31, indicate that DDB was looking for trucks while CGI was willing to send by rail. Rail shipments were to be delayed until May if trucks were not sent. CGI appeared to be clear about delivery by rail versus truck. While DDB did not contest the request for shipment by rail, DDB noted that shipment by truck could start almost immediately. These emails, dated March 31, 2022, were provided in exhibit 7 of DDB’s answer and counterclaim.

Although the arbitrators recognize both confirmations having some validity, the DDB contract holds precedence as it was signed, albeit months after it was initially written (October 12, 2021). The arbitrators conclude both parties failed to comply with NGFA Grain Trade Rule 3 governing the confirmation of contracts. Beyond application of the NGFA rules, it is good and standard practice in the trade to ensure agreement between the contracts and confirmations of contracting parties, which was not done by either party in this case.

Communication was non-existent between CGI and DDB based upon the information provided by both parties in this case until March 31, 2022, the day before delivery under the first contract (CGI confirmation 1034373/DDB confirmation CRA011001089) was set to start and already three full months into the six-month delivery period for the second contract (CGI confirmation 1034426/DDB confirmation CRA011001103).

The arbitrators note the need for communication initiated by DDB on June 27, 2022, and that DDB received no assurances from CGI that the contractual obligations could be met by the due date as CGI had only supplied 14 rail cars up to that point (out of the 79 cars required under the contracts). The arbitrators also note that DDB “passed” on some initial deliveries in April and May.

The arbitrators recognize that there may have been issues with obtaining rail transportation during the timeframe of this dispute in 2022, but it is not reasonable for such issues alone to justify the failure to meet the contractual obligations within the delivery window.

While DDB potentially could have been more direct about its delivery requirements and buy-in intentions, the arbitrators note there did not appear to be a way that CGI could timely deliver the contracted bushels to DDB within the time frame of the first contract. While the arbitrators understand

why DDB cancelled the contracts on July 8, 2022, based upon a determination that CGI would not have met the delivery time frame in the contract, DDB should have waited to cancel the balance of the first contract until the end of the contract delivery date (July 31, 2022) as stipulated by NGFA rules.

In their award in this case, the arbitrators include all grain shipped to and accepted by DDB after it cancelled the contract on July 8, 2022 – and before the end of the delivery date in the contract of July 31, 2022.

DDB did not fully adhere to its own contract confirmation with respect to its counterclaim for damages resulting from obligations that needed to be “bought in.” The arbitrators conclude the “buy-in” provision asserted in the counterclaim is invalid. When a buyer needs to “buy-in” bushels, the quantity due for delivery under the contract is reduced and there may be an invoiceable amount due by seller depending on the transaction and market conditions. The arbitrators noted little evidence of an enforceable buy-in process other than a few vague emails, that did not formally initiate a buy-in. Exhibit 8 in DDB’s answer and counterclaim provided further email conversation between the parties showing that CGI indicated that rail would be delayed a few weeks, and DDB responded it needed peas before that time and would likely need to buy-in product if CGI could not deliver peas before then

The counterclaim on two potential USDA tenders does not have merit. There is no manner in retrospect to expect or foresee if DDB would have won those tenders and to assess the true values of those tenders to DDB’s bottom-line. While the arbitrators note that CGI delivering timely bushels may have helped, DDB claimed to be “buying-in” bushels, which also could have been used for the claimed USDA tenders.

The arbitrators do not agree with either party’s claims for damages given that neither party lived up to its own or the other party’s contracts or intentions. Poor communication and a delivery window of four months appear to have offered too much wiggle room in the first contract. CGI did not meaningfully attempt to execute upon the first contract until the end of June (only 19 of 79 cars delivered), with the first significant communication occurring on June 27, nearly three months into the contract. The lack of a structured delivery timeline – spanning four months without incremental benchmarks – contributed to the shortfall in this dispute. This highlights a lack of diligence from both parties, necessitating clearer contract terms, better communication, and more manageable delivery schedules to avoid similar issues in the future.

The arbitrators’ decision is unanimous.

THE AWARD

Because it is unclear from the materials presented in the case how much grain was actually delivered, the arbitrators are unable to calculate a specific sum for damages for either party. For grain delivered to and accepted by Dakota Dry Bean, Inc. through July 31, 2022, Columbia Grain International, LLC is to be paid in full at the contract price. If any payments have been withheld due to this arbitration, Dakota Dry Bean, Inc. is to promptly pay for those bushels with interest due to Columbia Grain International, LLC of 4.75% from the date of the last bill of lading that is unpaid, until this award is paid in full.

Decided: February 27, 2025

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

Mike Hogan, *Chair*

Corporate Origination Manager
Consolidated Grain and Barge Co.
Jeffersonville, IN

Darren Amerongen

Director of Merchandising
Parrish & Heimbecker Ltd.
Winnipeg, Manitoba, Canada

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