

Arbitration 188

Notice to Members

Date of Issue: **October 2013**

Claimant: **Grain Buyer**

Respondent: **Grain Seller**

Arbitration Tribunal (AC)

- Mr Andrew Goyder, GrainLink, Western Australia.

Claim

The dispute between the parties concerns a contract for the sale of 24 tonnes (1 Trailer load) of Chana Dhal in 25kg bags on Chep pallets for delivery Ex Store (Respondents Warehouse) FH September 2012. The price was \$1000 Ex Store (ex GST) and the quality was described as Min MD as per GTA CSP 4.2, and oil polished. The total value of the claim amount in issue A\$9,512.11.

Issues for determination:

- The Claimant alleged goods supplied by the Respondent, in or around August 2012, did not comply with the description of specifications expressly provided for in the contract.

Award

- The Claim was denied and the Claimant was responsible to pay the Respondent's Arbitration fees.

Details

On or about 29th August 2012 the goods were transferred by road from the Respondent's warehouse, in Queensland, to the Claimant's warehouse in Victoria. According to the Claimant, it subsequently sold and supplied the product supplied by the Respondent to 3rd parties.

On or about 26th September 2012, the Claimant received a complaint from a third parties alleging that the product was not of the required specification. That third party rejected tender of the product and it was returned to the Claimant. The Claimant now brings the same claim against the Respondent.

Award findings

For the Claimant to succeed it must prove that the product delivered was not of the contractual specification. No such evidence was tendered. The Claimant must also satisfy the requirements of Rule 15.1.2(1) of the GTA Trade Rules.

Rule 16 then provides that subordinate to Rule 15, "all adjustments or compensation claimed based on defect of quality or condition ... which shall be apparent upon reasonable inspection must be advised within five [5] business days after unloading...and must be formally confirmed by written notice within thirty [30] consecutive days of the consignment. "

The Claimant has not complied with Trade Rules 15 and 16 and for these reasons, the claim must fail.

**IN THE MATTER OF THE COMMERCIAL
ARBITRATION ACT 2010 (NSW) AND
IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF GRAIN TRADE
AUSTRALIA LTD**

GTA Arbitration No.188

Grain Buyer

Claimant

and

Grain Seller

Respondent

Final Award

1. Introduction

This is a Final Award in an arbitration pursuant to the Dispute Resolution Rules of Grain Trade Australia Ltd ("GTA"). The arbitration has been conducted under the GTA Fast Track procedure and I have been appointed sole arbitrator.

The amount in issue A\$9,512.11.

Pursuant to the Fast Track procedure, the Claimant has submitted Points of Claim dated 26 August 2013, and the Respondent has submitted Points of Defense dated 18 September 2013. I have considered those submissions.

At issue in this dispute is the performance and alleged breach of a contract for the sale of Chana Dhal between the Claimant as Buyer, and the Respondent as Seller.

2. Jurisdiction

There has been no challenge to my jurisdiction to determine this dispute. I note that it arises from the performance of a contract between the parties evidenced by a Broker's Contract which clearly contains a referral of disputes to arbitration to be administered by GTA.

I find therefore that I am a validly appointed arbitrator with authority to determine the matters placed before me.

3. The Background to and Nature of the Dispute

Consistent with the policy of GTA Fast Track arbitration I propose to deal with the matters in dispute in a summary way.

Pursuant to a Broker's Contract no. 15609 dated 15 August 2012, the Claimant purchased from the Respondent 24 tonnes (1 Trailer load of Chana Dhal for delivery Ex Store (Respondents Warehouse) FH September 2012. The price was \$1000 Ex Store (ex GST) and the quality was described as Min MD as per GTA CSP 4.2, and oil polished.

The Contract Note further provided that all contracts come under GTA trading terms and conditions.

On or about 29 August 2012 the goods were transferred by road from the Respondent's warehouse in Queensland to the Claimant's warehouse in Victoria.

According to the Claimant, it subsequently sold and supplied the product supplied by the Respondent to 3rd parties.

On or about 26 September 2012 the Claimant received a complaint from one of the third parties alleging that the product was not of the required specification. That customer rejected tender of the product and it was returned to the Claimant.

The Claimant now brings the same claim against the Respondent.

For the Claimant to succeed it must prove that the product delivered was not of the contractual specification. It would normally do this by submitting evidence from an independent 3rd party analysis. I note that no such evidence has been tendered.

However the Claimant must also satisfy the requirements of Rule 15 of the GTA Trade Rules. Trade Rule 15.1.2(1) provides that:

"It shall be the duty of all Buyers to exercise due diligence in seeing that deliveries are inspected on "arrival" and to ascertain by inspection or other means and report the condition of the shipment, otherwise the Seller's liability ceases at the expiration of such time.

Trucks shall be considered to have arrived at the time and date of unloading...."

Rule 16 then provides that subordinate to Rule 15, "all adjustments or compensation claimed based on defect of quality or condition ... which shall be apparent upon reasonable inspection must be advised within five [5] business days after unloading...and must be formally confirmed by written notice within thirty [30] consecutive days of the consignment. "

Given that this is a Fast Track arbitration I do not intend a detailed analysis of these Rules. I also note that neither party has referred to these Rules in their submission.

Nevertheless as an arbitrator appointed by GTA under a GTA process concerning a contract obviously governed by the GTA Trade Rules it would be wrong of me not to have regard to and to apply the relevant Trade Rules, especially where they are clearly relevant to the dispute in question.

The Claimant has not submitted evidence of the alleged condition of the product. In fact, the Claimant did not raise any issue with the product on delivery and certainly not within 5 days as required by Rule 15. Even if the Claimant formally notified the

Respondent within consecutive days, the notice requirements under Rule 16 are cumulative and must both be complied with.

For these reasons, I am not satisfied that the Claimant has produced any evidence that the goods were not of the contractual specification. I also find that the Claimant has not complied with Trade Rules 15 and 16 and for these reasons, the claim must fail.

4. FINAL AWARD

Having considered the Submissions and for the reasons stated above, I make the following Final Award:

1. The Claim is dismissed.
2. The Claimant shall indemnify the Respondent in respect of any fees paid by the Respondent to GTA in relation to this arbitration.
3. The Claimant shall pay the Respondent's reasonable consultant's/legal costs (if any) subject to presentation by the Respondent of invoices and evidence of payment of the said invoices.

And I so publish my Final Award, at Sydney, 2 October 2013.

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Andrew Goyder, Arbitrator appointed by Grain Trade Australia Ltd.