

GTA Arbitration 196

Date of Issue: 19 May 2015

Claimant: Commodity Buyer (Transport Operator / Grain Trader)
&
Respondent: Commodity Seller (Grain Trader)

Arbitration Committee (AC)

- Mr Gerard Langtry, nominated by the Claimant;
- Mr Tim Teague, nominated by the Respondent, and
- Stephen Howells, nominated by GTA to Chair this Tribunal.

Claim

This dispute relates to the existence of an option in a contract between the parties for the supply of an additional 500MT of Cottonseed at \$210 ("the Contract")

When the Claimant attempted to exercise what they believed to be their option, the Respondent (after some prevarication), ultimately denied the existence of the option and refused to deliver the additional 500MT or cottonseed.

Award

In this instance, the Tribunal firstly issued a Partial Award stating:

1. As at 14 February 2014 the Respondent was in default of its contractual obligation to supply the Claimant with 500mt of cottonseed at \$210 per tonne.
2. The Claimant is entitled to damages based on the fair market price of cottonseed at that date, i.e. 14 February 2014.
3. The Claimant is also prima facie entitled to its costs.
4. Unless the parties can reach agreement in relation to the quantum of damages, the parties shall make additional submissions in relation to damages within 14 days of the date of this Partial Award.
5. The Claimant should also make submissions in relation to the costs it claims.

Subsequently, the Tribunal issued a Final Award, as provided and negotiated by the parties.

1. The Respondent shall pay the Claimant damages quantified at \$82,500.00.
2. The Respondent shall pay the Claimant's legal costs and expenses on a party basis quantified at \$21,818.20.
3. The Respondent shall indemnify the Claimant in respect of \$8,136.36 (which amount excludes GST) paid by the Claimant to GTA for Arbitration fees.
4. The Respondent shall pay all such monies to the Claimant in no later than seven days after 15 May 2015.
5. No interest will be payable by the Respondent to the Claimant in respect of damages, legal claims and expenses or arbitration fees.

Award findings

The Tribunal found that:

- Based on the wording of clause 10 in the contract, they prefer and agree with the Claimant's submission that clause 10 gave it the option to purchase an additional 500 mt of cottonseed at \$210 per tonne.
- In the Tribunals view and based on their industry experience, the wording is clear and straight forward. It was included on the Seller's generated contract form indicating that the Respondent Seller agreed to its effect.
- Neither party questioned the Contract or specifically clause 10 when the Contract was issued. The option included a definite quantity, date by which it was to be exercised and price showing a firm offer of the option.
- Finally, the inclusion of the price showed that it was intended to be binding in nature. If it were intended to be negotiable presumably the parties would have negotiated around the market price at the time.

**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. 196

Grain Buyer (Transport Operator / Grain Trader)
(Claimant)

and

Grain Seller (Grain Trader)
(Respondent)

Partial Award

1. INTRODUCTION

This is a Partial Award in an arbitration conducted pursuant to the Dispute Resolution Rules of Grain Trade Australia Ltd (“**GTA**”). The main issue for us to determine is whether the parties’ contract No.1234 for the sale and purchase of 2000mt of cottonseed (“the Contract”) included within its terms an option for the Claimant to purchase an additional 500mt of cottonseed at A\$210 (as contended by the Claimant) or whether the relevant clause only indicated that the Claimant may offer to purchase the additional tonnes subject to the Respondent’s consent (as contended by the Respondent),

There is no issue as to our jurisdiction as the Contract clearly contains (at clause 14 of the standard terms) a referral of disputes to GTA Arbitration.

We find therefore that we are a validly constituted Tribunal under the *Commercial Arbitration Act 2010* (NSW) and with jurisdiction to determine all issues in dispute between the parties.

This Tribunal comprises

1. Mr Gerard Langtry, nominated by the Claimant;
2. Mr Tim Teague, nominated by the Respondent, and
3. Stephen Howells, nominated by GTA to Chair this Tribunal.

The arbitration has proceeded on written submissions and documents alone and neither party has asked for an oral hearing.

The Claimant has relied on Points of Claim submitted to GTA under cover of a letter from their Lawyer dated 1 December 2014. These are supported by a statutory declaration of the Claimant dated 27 November 2014 and to which are annexed various supporting documents.

The Respondent relies on Points of Defence submitted to GTA under cover of a letter from their Lawyer dated 16 January 2015 (supplemented by a further letter dated 20 January 2015) and statutory declarations of the Respondent and their employee.

The Claimant and the Respondent have both submitted Points of Reply and further statutory declarations.

We have carefully considered these submissions, statements and supporting documents and base our decision on the facts and circumstances gleaned from these sources.

2. BACKGROUND TO THE DISPUTE

The Claimant operates a bulk handling and transportation business and from time to time it supplies grain to feedlots.

The Respondent is a supplier of cottonseed.

On or about 12 March 2013 the parties entered onto the Contract.

Clause 10 of the Contract includes the following;

“Confirmation by 01/10/13 for additional 500 MT @ \$210.”

The principal contract tonnage of 2000mt was supplied and delivered. It is not in dispute.

However when the Claimant attempted to exercise what he believed to be his option under clause 10 (on 16 May 2013), the Respondent (after some prevarication) ultimately denied the existence of the option and refused to deliver the additional 500mt.

3. OUR DECISION

Both parties submitted evidence in the form of statutory declarations setting out (among other things) their recollection of the negotiations leading up to the formation of the Contract.

Their recollections differed and tended to support their contentions as to the meaning and effect of clause 10.

In reaching our decision we have not found it necessary to prefer one version of events over another. Based on the wording of clause 10 we prefer and agree with the Claimant's submission that clause 10 gave it the option to purchase an additional 500 mt of cottonseed at \$210 per tonne.

In our view and based on our industry experience, the wording is clear and straight forward. It was included on the Seller's generated contract form indicating that the Respondent Seller agreed to its effect.

Neither party questioned the Contract or specifically clause 10 when the Contract was issued. The option included a definite quantity, date by which it was to be exercised and price showing a firm offer of the option.

Finally, the inclusion of the price showed that it was intended to be binding in nature. If it were intended to be negotiable presumably the parties would have negotiated around the market price at the time.

We also find that the Claimant sought to exercise the option on 16 May 2013. An email from the Respondent of 19 July 2013 does not constitute a repudiation as it does not indicate an unequivocal intention not to be bound by the terms of the Contract.

That did not happen until 14 February 2014 at which time the Contract came to an end.

The Tribunal notes that the Claimant submitted costs based off actual purchases during April and May 2014 for 316 tonnes¹ and a wash out of the residual based off a fair market price prevailing on 6 March 2014².

However, the Tribunal has determined that the appropriate date for the assessment of damages is 14 February 2014.

¹ Reference Claimants Points of Claim, Appendix Q

² Reference Claimants Points of Claim, Appendix L

4. PARTIAL AWARD

Having carefully considered the submissions and for the reasons stated above, the Tribunal makes the following Partial Award:

1. As at 14 February 2014 the Respondent was in default of its contractual obligation to supply the Claimant with 500mt of cottonseed at \$210 per tonne.
2. The Claimant is entitled to damages based on the fair market price of cottonseed at that date, i.e. 14 February 2014.
3. The Claimant is also prima facie entitled to its costs.
4. Unless the parties can reach agreement in relation to the quantum of damages, the parties shall make additional submissions in relation to damages within 14 days of the date of this Partial Award.
5. The Claimant should also make submissions in relation to the costs it claims.

This award is published the 15th day of April 2015.

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Stephen Howells, Chair Arbitrator appointed by GTA.

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Mr Gerard Langtry, Arbitrator appointed by the Claimant.

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Mr Tim Teague, Arbitrator appointed by the Respondent.

**IN THE MATTER OF THE COMMERCIAL ARBITRATION ACT 2010 (NSW) AND
IN THE MATTER OF AN ARBITRATION
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GTA Arbitration No. 196

Grain Buyer (Transport Operator / Grain Trader)
(Claimant)

and

Grain Seller (Grain Trader)
(Respondent)

Final Award

5. INTRODUCTION

On 15 April 2015 we published an Interim Award in this reference. We found for the Claimant on liability and invited the parties to attempt to resolve the outstanding issues (including quantum of damages and costs) between themselves, failing which we would determine those issues.

On 15 May 2015 the parties contacted GTA to advise that they had been successful in resolving these issues. We are grateful for this cooperation and it remains for us now only to conclude the matter by making this Final Award.

6. FINAL AWARD

For the reasons stated above and in our Partial Award published 15 April 2015, we now make the following Final Award.

1. The Respondent shall pay the Claimant damages quantified at \$82,500.00.
2. The Respondent shall pay the Claimant's legal costs and expenses on a party basis quantified at \$21,818.20.

3. The Respondent shall indemnify the Claimant in respect of \$8,136.36 (which amount excludes GST) paid by the Claimant to GTA for Arbitration fees.
4. The Respondent shall pay all such monies to the Claimant in no later than seven days after 15 May 2015.
5. No interest will be payable by the Respondent to the Claimant in respect of damages, legal claims and expenses or arbitration fees.

This award is published the 19th day of May 2015.

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Mr Stephen Howells, Chair Arbitrator appointed by GTA.

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Mr Gerard Langtry, Arbitrator appointed by the Claimant.

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Mr Tim Teague, Arbitrator appointed by the Respondent.