

**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. 286**

**Claimant (Buyer)**

and

**Respondent (Seller)**

**Final Award**

**1. INTRODUCTION**

- 1.1** This is Final Award in an arbitration conducted pursuant to the Fast-Track Dispute Resolution Rules of Grain Trade Australia Ltd ("GTA").
- 1.2** There has been no challenge to my appointment as sole arbitrator as the subject Commodities Broker's Note contract expressly incorporates the GTA No.3 Contract, which incorporates the GTA Dispute Resolution Rules.
- 1.3** I find therefore that I am a validly appointed arbitrator under the *Commercial Arbitration Act 2010 (NSW)* and with jurisdiction to determine all issues in dispute between the parties.
- 1.4** As is standard for Fast-Track arbitration, it has proceeded on written submissions and documents alone and without a hearing.
- 1.5** The Claimant has relied on undated Points of Claim received by GTA on or about 22 October 2018, supported by a bundle of accompanying documents.
- 1.6** The Respondent relies on undated Points of Defence received by GTA on 9 November 2018 supported by a bundle of accompanying documents.
- 1.1** I have read and considered these submissions and supporting documents and base my decision on the facts and circumstances arising from these materials.

**2. THE RELVANT FACTS**

- 2.1** Firstly, there is no dispute that by a Commodities Broker's Note contract dated 29 November 2017, the parties contracted for the sale by the Respondent to the Claimant of 2000MT F2 barley at A\$236 per tonne delivered Geelong/Melbourne between 1 January 2018 - 30 June 2018, Buyer's Call, max 500mt per week.
- 2.2** The Brokers Note contract specified that the terms of the GTA Contract No.3 were expressly incorporated into the contract though nothing material turns on this.
- 2.3** By email sent on 31 May the Claimant Buyer "called" for delivery of the first tranche of 500mt for delivery "next week". The Claimant sent the Respondent a PDF Order Confirmation dated 31 May 2018 stipulating tonnage (500mt), location and period (4 June-8 June).
- 2.4** The Respondent replied that it was unable to "accommodate delivery" as the "required period for notice" had not been given, later clarifying that as the contract was "Buyer's Call", the Buyer was obliged to give 15-days' notice.
- 2.5** The Claimant ultimately accepted the Respondent's position and on 1 June 2018 sent an email to the Respondent saying
- "Furthermore, please organize delivery of the remaining tonnage for 15<sup>th</sup>/22<sup>nd</sup> and 29<sup>th</sup>. Order numbers to follow."
- 2.6** The following day the Claimant sent another PDF Order Confirmation, again specifying tonnage (500mt), location and period (11-15 June). The Respondents proceeded to deliver against this Order Confirmation.
- 2.7** There appears to have been no further correspondence until 15 June when the Claimant again emailed the Respondent, saying
- "Please use the same reference number for the remainder of the deliveries to Melbourne."
- 2.8** The Respondent replied that this would not be possible as it had not received delivery instructions for the week commencing 18 June within the required notice period.
- 2.9** The Claimant replied that the instructions given on 1 June constituted valid delivery instructions for the purposes of the definition of Buyer's Call. The Respondent disagreed and asserted that the notice was not sufficient for the purposes of the definition of Buyer's call under the GTA Trade Rules and refused to make delivery.
- 2.10** On 27 June 2018 the Claimant held the Respondent in default on the balance of the contract, namely 500mt being the portion due for delivery 18-22<sup>nd</sup> June. The Respondent delivered on the portion due for delivery 25-29 June.
- 2.11** The issue for determination therefore is quite straightforward. Was the email sent by the Claimant on 1 June sufficient for the purposes of the definition of *Buyer's Call*?
- 2.12** Under the GTA Trade Rules, *Buyer's Call* is defined to mean;
- The Seller shall have fifteen [15] Calendar Days or such other time specified in the contract after receipt of instructions from the Buyer in which to make Delivery or Shipment.*
- 2.13** It is the Respondent's case that the instructions given by the Claimant were not sufficient to allow it to make delivery. The Rule does not stipulate the form or content of the instructions. However *Delivery Instructions* is a defined in the Trade Rules to mean

*a particularized list of delivery instructions sufficient to generate a bill of lading.*

- 2.14** I have concluded that the email on 1 June alone did not constitute sufficient instructions for the purposes of a Buyer's Call contract.
- 2.15** My reasons for reaching this conclusion are that the 1 June email itself made reference to "Order numbers to follow." The first order number did follow, on 1 June and the Respondent made delivery against that order. The next order number should have followed no later than about 8 June for delivery in the week 18<sup>th</sup> – 22<sup>nd</sup> June, but it didn't.
- 2.16** Further, the Seller needs to know tonnage, location and period for each delivery. This is consistent with the definition of Delivery Instructions referred to at [2.13] above. The Claimant could have issued 3 Delivery Orders or CMOs on 1 June, but didn't. Even though tonnes could be implied per weekly order and max tonnes per week as defined in the Brokers Note, the specific delivery period and in particular the delivery location were not defined.
- 2.17** The claim must therefore fail.

**3. AWARD**

- 3.1** For the reasons set out above, I make the following Award;
  - (a) The claim is dismissed;
  - (b) No order as to costs;
  - (c) The Claimant indemnify the Respondent in respect of any GTA arbitration fees it has paid.

**This award is made at Sydney this \_\_\_\_\_ day of November 2018.**

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Andrew Mead, Sole Arbitrator appointed by GTA.