

GTA Arbitration 131**Notice to Members**

Date of Issue: November 2010

Claimant: Commodity Seller
&
Respondent: Livestock Producer

Arbitration Committee (AC)

Lyndon Benecke - nominated by GTA

This arbitration was conducted as a Fast Track arbitration and hence has only one arbitrator nominated by GTA and approved by the parties.

Claim

This dispute relates to the terms of the contract between the parties.

Award

The Claim is allowed;

1. The Respondents are to pay the Claimant A\$11,123.10 by way of damages;
2. The Respondents to indemnify the Claimant for its arbitration costs of \$2,000.00

Details

It is the Claimant's case that they supplied the Respondents with a "test load" of stock feed and thereafter they contracted with the Respondents for the supply of 250mt of pellets at the price of \$355 ex store, plus freight, for delivery between 11 April 2008 and 31 October 2008.

The Claimant faxed a contract confirmation document to the Respondents on 17 April 2008. It was retransmitted on 30 May 2008.

It was claimed the Respondents had not received the transmission on 17 April 2008.

The Claimant made a delivery 28.34mt on 20 May 2008 and invoiced the Respondent accordingly for both that load and the 26.30 mt "test load". Both invoices were paid in full.

The Respondents say that the product supplied was "unsatisfactory" and the Claimant's Sales Representative was notified accordingly.

It was not entirely clear from the submission, whether the respondent had accepted a contract including the terms and conditions, and had subsequently terminated the contract for quality reasons, or whether no supply contract was entered into.

According to the Claimant, once the Respondents had indicated that they no longer wished to take supply under the Contract Confirmation, the Claimant varied the contract by altering the stock feed mix it was making for the Respondents. It is said in the Claimant's submissions that "the Claimant's representative and the respondent agreed" to this. This is denied by the Respondents.

There were 7 invoices produced, dated between 4 April 2008 and 4 November 2008. With the exception of the first invoice, all of the invoices contain a reference to the original Contract Confirmation number.

Award findings

In view of the objective evidence, the Claimant did contract with the Respondents on the terms of the Contract Confirmation.

In view of that finding, the Respondents in default in failing to take the full contract quantity and that the damages calculation set out in paragraph 43(e) of the Points of Claim appears to be fair and reasonable.

However given that the product was used in other applications the claim for interest revoked.

**IN THE MATTER OF THE COMMERCIAL
ARBITRATION ACT 1984 (NSW) AND
IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF GRAIN TRADE
AUSTRALIA LTD**

GTA Arbitration No. 131

Commodity Seller
(Claimant)

and

Livestock Producer
(Respondents)

Final Award

1. Introduction

This is an arbitration pursuant to the Dispute Resolution Rules of Grain Trade Australia Ltd ("GTA"), formerly NACMA.

At issue in this dispute are the terms of the contract between the parties.

The reference was conducted as a Fast Track arbitration.

The following submissions were received from the parties and have been considered by the Committee:

1. Claimant's Points of Claim dated 4 August 2010;
2. Respondent's Defence dated 23 August 2010;
3. Claimant's Further Submission at the request of the Committee dated 27 September 2010.

2. Jurisdiction

Both the Claimant and Respondents have willingly submitted their dispute to the jurisdiction of GTA. No challenge has been made either to GTA's jurisdiction or my appointment as arbitrator.

3. Facts

The Claimant is a seller of stock feeds.

The Respondents carry on business as livestock farmers.

It is the Claimant's case that on 4 April 2008 it supplied the Respondents with a "test load" of stock feed and thereafter on or around 11 April 2008 it contracted with the Respondents for

the supply of 250mt of pellets at the price of \$355 ex store Geelong, plus freight, for delivery between 11 April 2008 and 31 October 2008.

The Claimant prepared a contract confirmation document faxed it to the Respondents on 17 April 2008 ("the Contract Confirmation"). It was retransmitted on 30 May 2008, apparently because the Respondents had not received the transmission on 17 April 2008.

The Claimant made a delivery 28.34mt on 20 May 2008 and invoiced the Respondents.

It also allocated the 26.30mt "test load" under the contract, and invoiced the Respondents accordingly.

Both invoices were paid.

It is the Respondents' case that they did not contract with the Claimant on the terms of the contract confirmation. The Respondents say that the product supplied was "unsatisfactory" and the Claimant's Sales Representative was notified accordingly. While the Respondents received the faxed Contract Confirmation on 30 May 2008, they say that at the time they received the fax they had already advised the sales representative that the product was unsatisfactory.

It was not entirely clear from the submission, whether the respondent had accepted a contract including the terms and conditions, and had subsequently terminated the contract for quality reasons, or whether no supply contract was entered into.

It does appear however that even if the Respondents had concerns about the quality of the delivered product and expressed those concerns to the Claimant, they nevertheless paid the full invoice price.

According to the Claimant, once the Respondents had indicated that they no longer wished to take supply under the Contract Confirmation, the Claimant varied the contract by altering the stock feed mix it was making for the Respondents. It is said in the Claimant's submissions that "the Claimants representative and the respondent agreed" to this. This is denied by the Respondents.

The Claimant has produced a series of invoices addressed to the Respondents, some with hand-written notes. I assume these notes were not on the original invoices supplied to the Respondents. These form attachment 8 to the Points of Claim and are referred to in paragraph 22 of the Points of Claim. The Respondents do not comment on the said paragraph 22 in their Defence.

There are 7 invoices produced, dated between 4 April 2008 and 4 November 2008. With the exception of the first invoice (no 30500 dated 4 April 2008 which appears to relate to the "test load"), all of the invoices contain a reference to the original Contract Confirmation number.

4. Findings

In view of the objective evidence consisting of;

1. The Contract Confirmation faxed by the Claimant to the Respondent on 17 April 2008 and again on 30 May 2008;
2. The delivery of product on 20 May 2008;
3. The payment of the invoice for the 20 May 2008 delivery; and
4. The reference in various paid invoices to contract number.

I find that the Claimant did contract with the Respondents on the terms of the Contract Confirmation.

In view of that finding, I also find the Respondents in default in failing to take the full contract quantity and that the damages calculation set out in paragraph 43(e) of the Points of Claim appears to be fair and reasonable.

However given that the product was used in other applications I do not think that the claim for interest is made out.

5. Award

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

1. The Claim is allowed;
2. The Respondents are to pay the Claimant A\$11,123.10 by way of damages;
3. The Respondents to indemnify the Claimant for its arbitration costs of \$2,000.00

And I so publish my Final Award.

.....**Date:**/...../2010

Lyndon Benecke, Arbitrator nominated by Grain Trade Australia.