

Arbitration 148

Notice to Members

Date of Issue of Award: 30 September 2010

Claimant: Commodity Buyer

&

Respondent: Commodity Seller

Arbitration Committee (AC)

- Phil Holmes - 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 non delivery of grain against a contract. A invoice to “washout” the contract was not paid. The issues which fall for determination are:

1. Was the Claimant entitled to “wash” the contract out given an apparent change to the delivery point that was agreed at the time the contract was entered into and the delivery point nominated by the buyer in their grain movement order.

Details

The Claimant requested delivery to a site that was not agreed in the initial contract deliberations. The Respondent did not agree to the changed location and the contract was not delivered against.

Award findings

The Arbitrator found that:

- The Respondent was not required to deliver to the alternative site.

Award

- The Claimant was unsuccessful and instructed to pay the Respondent’s arbitration fees.

**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. 148

Claimant

and

Respondent

Final Award

1. Introduction

This is an arbitration under the GTA Fast Track arbitration rules.

I have been appointed as arbitrator. Both parties have participated in the arbitration and there has been no challenge to my jurisdiction.

The Claimant has submitted points of claim which were received by GTA on or about 30 July 2010.

The Respondent has submitted a Response received on or about 25 August 2010.

2. Facts

According to the submissions made by the parties, on or about 6 April 2009 the broker, acting for the Respondent entered into a contract with the Claimant.

The contract was for the sale by the Respondent to the Claimant of 200mt of 2008/2009 season Chick Peas at an agreed price of \$465pmt.

It appears to be conceded that during this discussion the Claimant advised the Respondent that the Delivery Point was 20kms to the west of Town.

The details were confirmed in writing in a Purchase Contract document, created by the Claimant and faxed to the Respondent. It is dated 6 April 2009 but the copy submitted by the

Claimant bears a stamp "FAXED - 7 April 2009" which accords with the fax transmission sheet also tendered. There does not appear to be any dispute that the contract was faxed to and received by the Respondent.

The contract document specified that the "Pricing Point" was "Storage point A of Town" (Delivery Point) and the "Delivery Period" was between 6 and 30 April 2009.

Relevantly the contract document is set-up as follows;

4. Price

<i>Grain Grade</i>	<i>Price</i>	<i>Pricing Point</i>
<i>CHJV2008</i>	<i>\$465 AUD</i>	<i>Delivered "Storage point A of Town"</i>

On or about 15 April 2009 the Claimant sent the Respondent a Grain Movement Order calling for delivery of the tonnage to Storage point B of Town.

That site B is not 20kms to the west of Town.

It thereafter became apparent through discussions with Claimant and the Respondent that the Respondent did not intend to deliver against the contract as the nominated Delivery Point was not 20kms west of Town.

The parties appear to have endeavored to resolve the dispute through various offers, but the matter remained unresolved as at the end of the delivery period. The Respondent has not delivered against the contract. The Claimant has submitted a Washout Invoice dated 1 May 2009 which has not been paid. The Claimant has accordingly submitted this claim to arbitration.

3. Determination and Reasons

As this is an arbitration under the GTA Fast Track Rules I intend to keep my reasons brief and to the point.

I find for the Respondent. While the contract document sent to the Respondent says "Delivered site A of Town", in a situation such as this where the parties expressly agreed during negotiations that the relevant delivery site was the site 20kms to the west of Town, it was not open for the Claimant under the contract to call for delivery at an alternative Town site.

In my view, the Claimant was in breach of its delivery obligations from the time it issued the non-contractual Grain Movement Order. While I appreciate that the evidence in Fast Track arbitrations is intentionally kept very brief, at no time does the Claimant appear to have offered to accept the grain at the site 20kms west of Town.

4. Final Award

Having considered the Claim and submissions I make the following Final Award:

1. That the claim is dismissed.
2. The Claimant is to pay the Respondent's share of the GTA Arbitration Fees and each party otherwise bear its own costs.

And I so publish my Final Award.

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Dated September 2010

Phillip Holmes, Sole Arbitrator, appointed by GTA