

**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. 284

Claimant (Seller)

and

Respondent (Buyer)

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 by GTA as the subject Contract expressly incorporates the GTA No.4 Contract as well as 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 Points of Claim dated 14 September 2018, supported by a bundle of accompanying documents.
- 1.6** The Respondent relies on undated Points of Defence received by GTA on or about 2 October 2018 supported by a bundle of accompanying documents.
- 1.7** With the permission of GTA the Claimant lodged Reply Submissions dated 13 November.
- 1.8** At the invitation of GTA, both parties have made submissions on costs in the event they are successful. The Claimant's submissions are dated 29 November 2018 and the Respondent's submissions are undated but were received by GTA on 29 November 2018.

- 1.9 I have read and considered these submissions and supporting documents and base my decision on the facts and circumstances arising from these materials.
- 1.10 This is a dispute over A\$21,146.35. While the Respondent alludes to having incurred losses, it has made no cross-claim. I therefore intend to keep my reasons brief.

2. THE RELVANT FACTS

- 2.1 Firstly, there is no dispute that by a Contract dated 20 February 2017, the parties contracted for the sale to the Respondent by the Claimant of 500MT F1 barley at A\$191 per tonne delivered Melbourne Packers/West side range May +\$2.50/ton/month June-Sept, Buyer's Call. Payment terms were 30 days from end of week of delivery within approved credit (**Contract**).
- 2.2 Both parties assert that the Contract terms were varied.
- 2.3 The Claimant contends that by an oral agreement the price was increased by \$1.50 per tonne and payment terms were extended to 60 days end of week of delivery.
- 2.4 The Respondent agrees that the price was increased but contends that the amended payment terms were 30 days end of month of delivery as evidenced by an email dated 20 February 2017 which, as the Claimant has pointed out, predates the Contract.
- 2.5 I find therefore that the payment terms were varied as contended by the Claimant to 60 days from end of week of delivery.
- 2.6 The Claimant placed various orders and the Respondent made various deliveries between June 2017 and November 2017.
- 2.7 By a series of emails sent in August 2017, the Claimant called for delivery and the Respondent refused to make delivery.
- 2.8 In its defence, the Respondent seeks to rely on Trade Rule 13.3.1 which provides;
- Should, when the Seller is required to make delivery, the Buyer be indebted and delinquent in payment to the Seller under this or any prior transaction, the Seller shall be entitled, on the giving of notice to the Buyer, to withhold delivery until such time as the delinquent indebtedness is satisfied.*

3. DECISION AND COSTS

- 3.1 The giving of notice is essential to the operation of Trade Rules 13.3.1. There is no evidence that the Respondent Seller gave the required notice to the Claimant Buyer so that defence must fail and the Claimant's claim is allowed.
- 3.2 As a result the Claimant is entitled to costs. In its submission the Claimant seeks costs of approximately \$9000 in relation to this arbitration, plus a further \$11,000 in relation to Local Court proceedings.
- 3.3 I don't intend to award costs of the Local Court proceedings. I assume that the Local Court can make its own costs orders.
- 3.4 I have read and considered the Claimant's submission on costs and I allow costs claimed in the amount of \$8,414.45.

3.5 I also allow the Claimant interest at the rate of 7%.

4. AWARD

4.1 For the reasons set out above, I make the following Award;

- (a) The claim is allowed in the sum of A\$21,146.35;
- (b) The Respondent shall pay the Claimant's legal costs which I fix at \$8,414.45;
- (c) The Claimant is entitled to interest at the rate of 7% per annum on the amounts payable under 4.1(a) and 4.1(b) above.
- (d) The Respondent to indemnify the Claimant in respect of the GTA arbitration fees which it has paid.

This award is made at Sydney this _____ day of December 2018.

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Kim Vater, Sole Arbitrator appointed by GTA.