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. 293

Grain Seller (Producer)

(Claimant)

and

Grain Buyer (Trader)
(Respondent)

Final Award

1. INTRODUCTION

1.1 This is the 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 and the parties have freely participated in the GTA arbitration process.

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 submitted Points of Claim dated 28 February 2019.

1.6 The Respondent has submitted Points of Defence dated 15 March 2019. These were supported by a Statutory Declaration of **Mr A** made 15 March 2019.

1.7 On 5 April I granted leave to the Claimant to make submissions in Reply which it did by Points of Reply dated 10 April 2019. These were supported by Statutory Declarations of **Mr B** and **Ms C** both made 10 April 2019.

1.8 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 RELEVANT FACTS

2.1 Despite the fact that the parties have commenced one arbitration, the dispute between them relates to two contracts as follows;

(a) Confirmation of Purchase (on the Respondent's form) No. [redacted] dated 8 January 2018 for the sale by the Claimant to the Respondent of 250 MT sorghum delivered [redacted] March–April 2018 at $265MT less levies (**Contract 1**);

(b) Confirmation of Purchase (on the Respondent's form) No. [redacted] dated 12 January 2018 for the sale by the Claimant to the Respondent of 200 MT sorghum delivered [redacted] March-April 2018 at $260MT less levies (**Contract 2**).

2.2 It appears to be accepted in breach of the Contracts, the Claimant delivered 75.3mt against Contract 1, and delivered nothing against Contract 2. Again, it appears to be common ground that 333MT was undelivered under the two contracts.

2.3 The dispute between the parties relates to the damages, or washout, that flows from this.

2.4 The Claimant says that the damages should be based on the price of sorghum on 1 May 2018, being (it says) the day after the expiry of the delivery period and accordingly the date of default. On this analysis the Claimant is liable to pay the Respondent $38,956.15.

2.5 The Respondent disputes the Claimant's contention. The Respondent says that the Contracts were in fact extended by agreement and so the actual date of default for the purpose of calculating damages was 18 October 2018, being the date that the Respondent gave notice of default to the Claimant, having entered into a contract with a 3rd party on 16 October 2018. It says that based on the fair market price of equivalent grain on or about that date, it is entitled to payment of $55,754 in respect of both contracts.

3. CONSIDERATIONS

3.1 The parties have elected to conduct this dispute according to the Grain Trade Australia Fast Track arbitration rules. Having made that election I am bound to follow it and dispose of the matter in summary fashion.

3.2 I accordingly find for the Respondent for the following reasons;

(a) Throughout all correspondence it seems both parties continued to discuss options to transact both contracts in question well past the original delivery period, whether that be via actual physical deliveries, discussions with regards to rolling contracts to a subsequent season or washing the contracts out. This continued up until 18 September. This, and actual deliveries on 10 May and 22 August showed the liability of both contracts remained in force with neither party having issued a formal default notice up until that point;

(b) Formal written default notice in respect of both contracts was given on 18 October. I am happy with the washout price being a true conversion of the Respondent's recent purchase site [redacted];

(c) I am not persuaded by an argument based on Force Majeure for various reasons including that under the GTA Rules force majeure simply extends time for performance,

and secondly because there was no evidence that the Claimant could not have met its obligations by sourcing grain from other locations.

3.3 At my request, the parties have both made submissions dated 17 April in relation to legal costs. As I have found for the Respondent I also find that the Respondent is entitled to costs. The Respondent has claimed in effect an indemnity in respect of all of its legal costs. I don't consider that warranted but I allow the Respondent its costs of the arbitration process which I fix at $[redacted] (inc GST). I also award the Respondent interest on the outstanding sum from 18 October 2018 at 7% per annum.

4. AWARD

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

(a) The Claimant shall pay the Respondent the amount of $[redacted] forthwith being

(i) $[redacted] in respect of Contract No.1 and

(ii) $[redacted] in respect of Contract No.2.

(b) The Claimant shall pay the Respondent's legal costs which I fix at $[redacted] (inc GST);

(c) The Claimant shall pay the Respondent interest which I fix at $[redacted].

(d) The Claimant shall indemnify the Respondent in respect of the GTA arbitration fees which it has paid.

This award is made at Sydney this 18th day of April 2019.

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Andrew Mead, Sole Arbitrator appointed by GTA.