

**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. 399

[REDACTED]
Claimant

and

[REDACTED]
Respondent

Award

A. Introduction

1. This is the Final Award in an arbitration conducted pursuant to the Fast Track rules of the Dispute Resolution Rules (**DR Rules**) of Grain Trade Australia Ltd (**GTA**).
2. This arbitration was commenced by the Claimant filing the 'Initiating a Dispute Resolution process' form dated 29 Jan 2025.
3. Pursuant to the DR Rules, I have been appointed sole arbitrator by GTA.
4. The Claimant has external legal representation from [REDACTED].
5. The Respondent appears to have engaged [REDACTED] as its legal representative.
6. The parties have executed a "Contract for Fast Track Arbitration" (the Claimant on 6 February 2025 and the Respondent on 7 February 2025) which states, among other things, that the parties agree to submit their dispute to arbitration in accordance with the DR Rules "*in force at the commencement of this arbitration*". So, the latest version of the DR Rules (dated 19 December 2022) is applicable to this arbitration.
7. Pursuant to Article 13 of the DR Rules (headed 'Governing Legislation'), the provisions of the Commercial Arbitration Act 2010 (NSW) (**CAA**) shall apply. The Parties having chosen the NSW legislation to govern this arbitration and I find that NSW and specifically Sydney is the seat of this Arbitration as that term is defined in Article 44(1)(a) of the DR Rules.
8. I am listed on the GTA list of arbitrators under Article 6.1 of the DR Rules.
9. I have read and considered the;
 - (a) Claimant's Points of Claim dated 31 March 2025 (**Claim Submissions**);

- (b) Witness Statement of Mr T signed 31 March 2025 and its Annexures 1 – 7 (**T Statement**);
- (c) Respondent’s submissions in response dated 26 April 2025 (**Defence Submissions**); and
- (d) Claimant’s Points in Reply dated 9 May 2025 (**Reply Submissions**).

B. Facts

- 10. This arbitration has been conducted under the GTA Fast Track Rules, which support a quick and low-cost process arbitration with no formal hearing. I establish the facts on which I make my decision on the balance of probability.
- 11. The parties’ statements diverge on factual matters. I have set out each party’s case first as appearing to me from the parties’ documents and then have made my findings on the balance of probability based on the parties’ submissions and supporting documents.

The Claimant’s submissions

- 12. The Claimant’s version of events is set out in its Claim Submission, Mr T Statement and Reply Submissions.
- 13. On 16 October 2024, Mr T for the Claimant and Mr D for the Respondent had a phone discussion. The existence of this call on 16 October 2024 (**16 October Call**) is not denied by the Respondent though the content of the call is contentious between the parties.
- 14. The Claimant says that a discussion with words to the following effect occurred during the 16 October Call:

Mr T – *“Do you have any Rye in?”*

Mr D – *“Yes, what price are you looking at?”*

Mr T – *“We can do \$540 RYE1, \$530 RYE2 and \$520 RYE3 delivered to [REDACTED] for December/January delivery. How much would you like to sell?”*

Mr D – *“350 tonne”.*

Mr T – *“Great, we’ll take it. What’s your NGR number as I need that to enter a contract on our system.”*

[Mr D then provided the NGR number.]

Mr T – *“Thanks, I’ll enter the contract in our system and send you an email confirmation.”*

- 15. The Claimant says that this constituted an agreement between the Claimant and Respondent for the purchase and supply of 350 tonnes of rye by end of January 2025 (**Original Contract**).
- 16. Following the call, still on 16 October 2024, Mr T entered the details into the Claimant’s stock management system and generated a contract document numbered XX (**Contract XX**) containing the terms of the Original Contract.
- 17. Still on 16 October 2025 Mr T emailed Ms S (**Ms S**) of the Respondent, who I understand to be the wife of Mr D.

18. The email relevantly stated:

"Confirming deal as agreed on the phone. Claimant will buy....

...NGR: [REDACTED]

Appreciate the business".

19. The email annexed Contract XX which according to its terms "incorporates the attached Claimant Terms and Conditions (Ts&Cs) and expressly incorporates the GTA Trade Rules in force at the time of this contract and Dispute Resolution Rules in force at the commencement of arbitration".

20. Contract XX was signed by Mr T for the Claimant, the Buyer under the Contract. It relevantly stated:

"Please sign and return a copy by fax, post, or email to the above address. If not returned within 2 business days all details will be taken to be correct and complete."

21. The Respondent did not sign and return Contract XX.

22. The Respondent also did not raise any issues about the email from Mr T or Contract XX.

23. On 9 December 2024, the Claimant attempted to call the Respondent without response.

24. On 7 January 2025, Mr D called Mr T and informed him that he had a bad frost and the Respondent could only supply 100 tonnes of the 350 tonnes contract. Mr T, on behalf of the Claimant, agreed to take 100 tonnes of rye from the Respondent and noted that it would assist the Respondent to find the remaining 250 tonnes from other growers to fulfil the remainder of the Contract.

25. From about 7 January to 16 January, Mr T attempted to find alternative rye growers but was informed they had no stock and attempted to call Mr D to no avail.

26. On 16 January 2025, Mr T issued a text message asking

"...Is there anyone else you know with Rye [sic] that you could speak to?"

to which Mr D replied by text:

"No, I don't and I can't help you on that one. There's just none around."

"I thought I said we cancelled that contract anyway".

27. The Claimant says that it understood the reference to the contract being "cancelled" as a reference to the Respondent not providing 250 tonne of the 350 tonne given the discussions between Mr D and Mr T.

28. Following that message, on 16 January 2025, the Claimant then called Mr D and had a conversation about alternative growers. The Claimant says Mr T asked Mr D whether he could deliver the 100 tonne of rye in the week commencing 20 January 2025 to which Mr D informed that he could not due to his health issue and so would try the week after that.

29. On 17 January 2025, Mr D provided the phone number of another alternative grower to Mr T. Mr T informed Mr D that he had called the grower and was informed that there was no rye stock.

30. On 23 January 2025, Mr T and Mr D had another call during which the Claimant says that:
- (a) Mr D said he was hesitant to deliver 100 tonne as he was concerned the Claimant would not pay him the full amount for the grain due to not being able to supply the full 350 tonne on the contract;
 - (b) Mr D wanted to hold the delivery of 100 tonnes till March;
 - (c) Mr T informed Mr D that he would be paid the full price, that Mr D needed to find a source for 250 tonne, and that a March delivery was fine.
31. On 23 Jan 2025, the Claimant then unilaterally decided to vary the agreement and reduce the contract to 100 tonnes only, on the basis of concerns about Mr D's health and the belief that Mr D would not supply the 250 tonnes.
32. On 23 Jan 2025, Mr T issued a text message to Mr D informing him that the Claimant had agreed to vary the contract by reducing the required tonnage under the Original Contract to 100 tonnes (Variation). The text message stated:
- "Hi [Mr D], confirming we agree to reduce contract to 100t and extend to March".*
33. On the same day, Mr T then issued an email to Ms S noting the Variation. The email stated:
- "...Please find updated contract attached with tonnage reduced to 100 and delivery period extended to March"*
34. The email attached a GTA "Purchase contract confirmation" which noted the "Quantity: 100.00 tonne" and noted that "This contract replaced the balance of original [Contract XX]. The form was signed by the Claimant. It stated:
- "Please return a copy of this confirmation to us within 24 hours confirming your agreement ...Failure to return a copy of the confirmation will not later or affect the validity of the confirmation or contract..."*
35. On the same day, on 23 Jan 2025, Ms S issued an email to Mr T noting
- "...Thank you for your email and efforts with the rye. Unfortunately at this time we have made a decision to hang onto our rye as [REDACTED] is unable to cart rye to [REDACTED] due to ongoing health issues. Should the situation change, we will let you know".*
36. Shortly after, Mr T issued an email to Ms S stating:
- "...Sorry to hear about the health issues. If delivery is an issue we can convert the contract to ex-farm @ -\$45 and organise the freight ourselves?*
- We have been very flexible allowing the tonnes to be reduced from 350t to 100t and extending the delivery period. We have entered into a contract and expect it to be supplied.*
- Please confirm by 5pm tomorrow."*
37. Mr T did not receive a reply to this email.
38. On 26 February 2025, the Claimant procured 100 tonnes of rye from an alternative supplier at a price of \$850/tonne - \$310/tonne higher than under the Original Contract. As a result, the Claimant says it suffered a loss of \$31,000.

39. The price noted on the GTA 'Purchase contract confirmation' for the purchase of 100 tonne from the alternative grower, [REDACTED] Pty Ltd, is \$830 per tonne not \$850 per tonne.

Respondent's submissions

40. The Respondent's version of events is set out in its Defence Submission. The Defence Submissions are predominantly in form of witness statements from Mr D and Ms S. Based on that, the Respondent's recollection of events are as follows.
41. The Respondents recall the 16 October Call as follows:
- MR T rang Mr D and asked if Mr D had any rye sown this year.
- Mr D said, "yes, about 800 acres, give or take".
- Mr T asked Mr D how he thought it would yield.
- Mr D told Mr T he had no idea at this stage of the growing season.
- Mr T then asked Mr D whether Mr D thought it would go 5 or 6 bags or thereabouts and then Mr T proceeded to tell Mr D that Mr D should get at least 300 tonne off it.
- To which Mr D replied, "I would have no idea until I strip it and put it in the bin, and only then would I know how many tonnes I was likely to have."
- Mr T proceeded to say well you [Mr D] may even get 350 tonnes then. Mr D then stated that he again reiterated that he wouldn't be doing anything until he had harvested it, and it was in the bin, and he knew exactly how much rye he had.
42. Following the call, Ms S received Mr T's email purportedly confirming the Original Contract.
43. Mr D informed Ms S, who handled the business affairs for the Respondent, to not print or sign the Contract XX as there was no agreement to supply 350 tonnes of rye yet.
44. The Respondent believed that it had not entered into any contract with the Claimant because it had not signed and returned the Contract XX.
45. The Respondent says that sometime after the 16 October Call but before harvest, Mr D and Mr T had three other calls.
46. The first call, 10 days after the 16 October Call, Mr T called Mr D and the Respondent recalls as follows:
- Mr T asked how was the rye going?
- Mr D replied "I haven't harvested it yet."
- Mr T asked, "Would I be able to deliver it in December?"
- Mr D replied that he still has no intention of doing anything until he has harvested it and put in a bin, so he knows how many tonnes he has and what he will need to keep for the Respondent to get through next year.
47. The second call, which occurred after the first call but at an unspecified time, the Respondent recalls as follows:

Mr T asked Mr D about the contract and told Mr D that Mr D had a contract that Mr D had to fill, to which Mr D replied, I haven't signed any contract and I told you in previous phone conversations, that I wasn't doing anything until I had it harvested.

Mr T told Mr D that it was a contract, and Mr D had to fill it.

Mr D said to Mr T, you've sold this grain to someone else haven't you, under a contract, which Mr T replied, yes.

Mr D said, "why would you sell something you do not have and which I never agreed to?"

Mr T replied, "you need to fill the contract."

Mr D said again, "I haven't signed anything, there is no contract, and I have maintained in all our conversations that I would not sell anything until I have the tonnage.

Mr D proceeded to then tell Mr T at least three people who might have rye, gave Mr T their phone numbers to try and help him out to source some rye for the contract Mr T seemed to have already done.

48. The third call, which occurred after the second call but at an unspecified time, the Respondent recalls as follows:

Mr T rang Mr D again and told Mr D that Mr D had to buy the rye off other people to fill the contract if Mr D wasn't going to have enough.

To which Mr D said, "no, I told you three to four times already, before you sent the first email, that I was not doing anything until I had harvested the grain and knew exactly what tonnage I had."

49. The Claimant states it has no records of these three calls, does not recall these calls and says that the only call after the 16 October Call was the missed calls on 9 December 2024.

50. During the end of the October, the Respondent's farm suffered severe frost one night which heavily impacted the crops in the farm.

51. The Respondent recounts a discussion between Mr D and Mr T as follows – which I presume occurred through telephone:

Mr T asked about the harvest, and Mr D told him the Respondent was hit hard with frost.

Mr D told MR T that Mr D had about three truck loads or approximately 80-100 tonnes of rye in the bin.

Mr D told Mr T that Mr D wasn't sure what Mr D would have for sale because Mr D hadn't yet worked out how much Mr D would need for sowing for sheep feed for the next year. The Respondent's harvest went well into January 2025.

Mr D told Mr T that Mr D was probably at the lowest point Mr D had ever been in his life and really struggling.

Mr D indicated to Mr T that if Mr D felt better in March, Mr D would go down to pick up my fertilizer from Geelong and Mr D would contact Mr T if Mr T decided that Mr D might have some rye for sale that Mr D could drop off in [REDACTED] at Caimant on the way.

Mr T then proceeded to say, I will send through a 100 tonne contract instead of the original 350 tonne contract.

52. The Claimant says it recalls discussing the frost but does not recall any discussion regarding the Respondent waiting to see what tonnage was available at harvest, or that Mr D would need to retain some rye for the Respondent's own requirements.

53. Some time in January, Mr D told Ms S to not print or sign another contract if sent by Mr T and they had a conversation as follows:

Mr D said to Ms S, "he [Mr T] 'he still isn't listening to me, and I have said repeatedly that I only have about 100 tonnes of rye and at this stage I am still not sure what I am doing with it and when".

Mr D also said to Ms S, "I can't contemplate taking the rye down to [REDACTED] as I had originally intended because of my current health issues but I told [Mr T] that should things improve and if I did have some rye for sale I would get back in touch with him - I still needed to work out how many tonnes we needed to sow for sheep feed."

54. After this call, Ms S received Mr T's email with details of the Variation.

55. The Respondent says that:

- (a) Mr D told Ms S to respond to Mr T that they are not selling rye. Accordingly, Ms S sent the email to Mr T that the Respondent would not be selling the rye;
- (b) Mr D blocked Mr T's number;
- (c) Mr D contacted [REDACTED] to help intervene in this issue.

56. The Respondent then received Mr T's second email of 23 January 2025. The Respondent says it by error perceived that it did not have time to respond to Mr T's email and so thought there was nothing further it could do.

57. The Respondent has not sold its rye to any other buyer.

58. The Respondent says that it perceived that contracts needed to be signed by both parties to be binding and since it had not signed anything with the Claimant it did not think it was bound by any terms.

59. It is also notable that Mr D says that he was suffering from mental and physical health issues from December onwards which impacted his ability to organize the rye and administer the sale (to anyone).

My findings on the facts

60. The Claimant and Respondent's subjective recollection of events differ considerably.

61. In those circumstances I will give weight to any objective evidence that supports either party's recollection of events.

62. The primary issue, it appears to me, is what was discussed on the 16 October Call and whether it was capable of giving rise to an agreement between the Claimant and Respondent as subsequently reflected in Contract XX.

63. In my view the evidence supports the existence of a binding and enforceable contract from 16 October 2024, on the terms of Contract XX. I base this largely on the email sent on 16 October 2024.
64. The Respondent acknowledges receipt of this email and says candidly in its submissions that it believed that no contract was concluded until both parties have signed it.
65. Mr D says “I reiterate that at no time did Mr T explain to us that just because you haven't signed the contract, it doesn't mean that it is not a legally binding contract. Our knowledge of contracts, and all we have engaged in over 40 years of farming, has been based on a signed written agreement between two parties.”
66. I must say this contrasts with my considerable personal experience of trading in the grains industry where contracts are rarely signed by both parties including contracts between growers and the Trade. It may well be that the Respondent's practice is not to execute contracts unless a document is signed by both parties. But that submission would have been more persuasive had the Respondents produced copies of prior contracts they had performed, signed by both parties.
67. I acknowledge and have sympathy for Mr D who was suffering from physical and mental ill-health during this period. This may have contributed to some of the confusion around events, but cannot I'm afraid excuse performance of the contract.
68. I should also say something about the alleged Variation (see paragraph 32 above). In my assessment the contract tonnage remained the 350 tonnes of Contract XX. It may be that the Claimant offered to vary the contract on 23 January 2025, but that variation was never accepted by the Respondent. While the Claimant could therefore have based its claim on the full contract quantity, it has elected to pursue a breach only in respect of 100 tonnes.
69. The Claimant has claimed specific performance in respect of delivery of the 100 tonnes of rye alternatively damages. I am not persuaded that specific performance is a necessary remedy in this case.
70. Having found the existence of a contract, and default in respect at least of 100 tonnes of that contract, I also accept the Claimant's uncontradicted submissions and evidence at paragraphs 27-29 of its Claims Submissions in relation to damages consequent on that breach.

C. Other Matters

71. Having found that the claim is made out, the Claimant has also claimed interest and costs.
72. The Claimant has not identified a rate of interest so I exercise my discretion under section 33E of the CAA to award interest at the rate of 5% per annum from 29 January 2025 to the date of publication of this Award.
73. The Claimant has claimed costs, and has submitted proof that it incurred \$5115 (exclusive of GST) by way of legal costs which I consider to be reasonable and so award.
74. I also order that the Respondent indemnify the Claimant in respect of arbitration fees paid by the Claimant to GTA in respect of this arbitration.

D. Award

75. For the reasons above, my Award is;
- (a) The Respondent shall pay the Claimant \$ [REDACTED] forthwith;

- (b) The Respondent shall pay the Claimant \$5115 (inclusive) in respect of legal costs.
- (c) The Respondent shall pay interest on \$ [REDACTED] at 5% per annum from 29 January 2025 to the date of this Award;
- (d) The Respondent shall indemnify the Claimant in respect of arbitration fees paid by the Claimant to GTA; and

This award is dated at Sydney, the day of May 2025

.....
Anthony Furse, Arbitrator