

# Arbitration Case Number 1966

**Plaintiff: Denny Hensel, Kenton, Ohio**

**Defendant: Cargill Inc., Minneapolis, Minn.**

## Decision on Jurisdiction

Denny Hensel (Hensel) submitted an arbitration complaint to the National Grain and Feed Association (NGFA®) by letter from his attorney dated Nov. 30, 1998.

The NGFA received the letter and accompanying enclosures on Dec. 1, 1998. A "National Grain and Feed Association contract for arbitration" was prepared based upon the plaintiff's complaint and Cargill Inc. (Cargill) was notified of the plaintiff's arbitration complaint by letter dated Dec. 11, 1998 from the NGFA.

Cargill, by letter dated Dec. 18, 1998, requested dismissal of Hensel's arbitration complaint because it was not filed within 30 days of issuance of a court order by U.S. District Court Judge David A. Katz in the case of *Denny Hensel v. Cargill Inc.* [Case No. 3:97 CV 7700 (N.D. Ohio Apr. 13, 1998)(memorandum opinion and judgment entry granting Cargill's motion to compel arbitration and stay court case).]

Section 3(d) of the NGFA's Arbitration Rules states: "The original complaint in connection with any disputed matter proposed for arbitration must be filed with the National Secretary within twelve (12) months after expiration date for performance of the contract or contracts involved. For cases between a member and nonmember arbitrated pursuant to court order, the complaint must be filed by either or both parties within 30 days of issuance of court order."

Hensel's arbitration complaint referenced a dispute concerning Cargill's contract number 32249. The transaction involved a sale by Cargill to Hensel of 150,000 bushels of U.S. No. 2 white corn, 14.5 to 16.5 percent moisture, for the stated shipment period of December 1996 through January 1997, scattered shipments on rail, f.o.b. Lima, Ohio. Under the contract, Hensel was obligated to supply trucks to take shipments in 20,000-bushel increments within two days after rail unload. The contract confirmation attached to Hensel's arbitration complaint showed that it was signed by Hensel on Sept.

18, 1996. Hensel contended that Cargill breached the quality specifications of the contract and alleged damages of \$205,847.

The memorandum opinion issued by Judge Katz pursuant to the court order made it clear that both the court case and the arbitration complaint involved the same transaction.

However, Hensel's arbitration complaint pursuant to this case was not filed in a timely manner under the requirements set forth in Section 3(d) of the NGFA Arbitration Rules. It was not filed within 12 months after expiration date for performance of the contract or contracts involved. Nor was it filed within 30 days of issuance of the federal court order<sup>1</sup>.

Section 1 of the NGFA Arbitration Rules vests in the National Secretary the responsibility and authority to administer the NGFA Arbitration System. As such, the National Secretary makes such procedural decisions necessary to implement the provisions of the NGFA Arbitration Rules.

Section 3(d) of the NGFA Arbitration Rules is designed to ensure that claims arising from contractual matters proceed to final resolution within a reasonable time. Thus, Section 3(d) is akin to a "statute of limitations" on actions governed by the rules. There is no authority set forth in the NGFA Arbitration Rules for waiving the requirements of Section 3(d).

Therefore, it is ordered that:

The arbitration complaint filed by Denny Hensel against Cargill Inc. is dismissed as barred by the express time limits set forth in the NGFA Arbitration Rules.

Dated: Dec. 21, 1998

National Grain and Feed Association

By: David C. Barrett Jr.  
National Secretary

<sup>1</sup> Cargill Inc. was and is a NGFA Active member. Hensel is not a NGFA member.



# Arbitration Decision

National Grain and Feed Association

July 29, 1999

## Arbitration Appeals Case Number 1966

**Appellant: Denny Hensel, Kenton, Ohio**

**Appellee: Cargill Inc., Minneapolis, Minn.**

*[Editor's Note: The Decision on Jurisdiction rendered by the National Secretary that is the subject of this Arbitration Appeals Decision is reprinted at the conclusion of the Arbitration Appeals Decision]*

The Arbitration Appeals Committee, individually and collectively, received all the evidence submitted in Arbitration Case Number 1966. It also reviewed the original Decision on Jurisdiction rendered by the National Secretary.

### The Decision

The Arbitration Rules of the National Grain and Feed Association are explicit in that "for cases between a member and nonmember arbitrated pursuant to court order, the complaint must be filed with the National Secretary by either or both parties within 30 days of issuance of court order."

The appellant's attorney during the court proceedings, which ultimately resulted in the judge ordering the case to arbitration, utilized the National Grain and Feed Association's *Trade Rules and Arbitration Rules* booklet. Therefore, ignorance of the rules cannot be argued.

Therefore, the Arbitration Appeals Committee unanimously affirmed the decision of the Secretary of the National Grain and Feed Association in the original Decision on Jurisdiction that the arbitration case of Denny Hensel versus Cargill Inc. is dismissed for failure to file the case on a timely basis pursuant to the National Grain and Feed Association's Arbitration Rules.

Submitted with the consent and approval of the Arbitration Appeals Committee, whose names are listed below:

**John L. McClenathan, Chairman**  
Vice President, Grain Marketing  
GROWMARK, Inc.  
Bloomington, Ill.

**Steven Colthurst**  
Procurement Manager  
Land O'Lakes, Inc. Western Feed Division  
Seattle, Wash.

**Philip Hageman**  
Vice President  
Parrish & Heimbecker Inc.  
Brown City, Mich.

**Dennis McLeod**  
President  
Red River Valley & Western Railroad Co.  
Wahpeton, N.D.

**Edward P. Milbank**  
President  
Milbank Mills Inc.  
Chillicothe, Mo.

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