



June 1, 2020

CASE NUMBER 2845

**PLAINTIFF: HERSCHER GRAIN CO.
 HERSCHER, IL**

**DEFENDANT: ADM GRAIN COMPANY
 DECATUR, IL**

STATEMENT OF THE CASE

Herscher Grain Co. (Herscher) is seeking reimbursement against ADM Grain Company (“ADM”) for freight charges of \$22,299.50 as well as cleaning costs of \$1,095 and arbitration costs of \$750.

Herscher was the seller of 400,000 bushels of yellow corn through a broker on April 6, 2018 (contract number 0268823/broker confirmation number 022697). The contract provided for 105 railcars FOB Herscher, IL with destination weight and origin grades. Special remarks in the contract provided for private cars and seven-day load guarantee.

Herscher started loading railcars on April 30, 2018. Herscher discovered three of the cars contained soybean meal from previously shipped loads. In conversation between the parties, they agreed Herscher would clean the cars and charge ADM for the labor and the cost of the dumpster for cleaning of the cars containing soybean meal.

In addition, Herscher discovered eight of the cars that were “large capacity” but had a small load limit. During Herscher’s conversation with ADM regarding the large capacity cars, Herscher claims it was asked to “bill cars empty and to not reject” the cars for ADM’s convenience. At that time, the parties did not discuss cost and no amendments were made to the contract. Herscher also claims that because of prior business between the parties, ADM knew Herscher did not have a scale and that cars are sight loaded. Herscher further claims ADM’s failure to adhere to the NGFA Code of Ethics was a contributing factor to the dispute. Herscher states it was charged dead freight of \$22,299.50 by ADM by withholding funds from final settlement.

Herscher seeks to recover the dead freight charges that were withheld as well as the \$1,095 in costs related to the cleaning of the soybean meal cars and \$750 for reimbursement of arbitration services.

ADM claims that Herscher failed to comply with Rule NGFA Grain Trade Rule 16(A) because it failed to load the railcars to 263,000 pounds causing ADM to incur the dead freight charges.

THE DECISION

The arbitration committee finds that Herscher violated Grain Trade Rule 16 (A) by not loading the cars to capacity and billing them as if they were loaded. Following ADM's request to bill cars as to not have the string broke apart was in good faith by Herscher but there were no contractual agreements or amendments between parties regarding dead freight. Herscher did not provide sufficient evidence that ADM instructed to not load or agreed to bear dead freight costs. The Committee understands Herscher's request for Ethics violation against ADM as its actions were not, in the opinion of the committee, representative of a good trading partner. However, ADM did follow the contract explicitly and thus are able to utilize NGFA Rule 16 (A) in this matter.

The committee unanimously sides with ADM. Any agreements between parties must be amended in signed contract or other forms of documentation. The committee did consider a lack of ethics against ADM, however, proper procedures on Herscher's side could have avoided the claim including stating on the original contract any loading limitations. There are no monetary damages awarded to either party. ADM did supply evidence showing the payment of the invoice for a dumpster and labor was sent to Herscher after the start of the arbitration process.

THE AWARD

No damages are awarded in this case.

Decided: April 10, 2020

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Troy Presley, *Chair*
Grain Division Manager
CoMark Equity Alliance
Cheney, KS

Eric Dubbelde
Grain Market Advisor
Central Farm Service
Truman, MN

Brian Liedl
Senior Merchant
United Grain Corp.
Vancouver, WA