

BETWEEN

AQ
APPLICANT

AND

ZJ
RESPONDENT

Date of Order:

16 April 2014

Referee:

Referee Murphy

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the family name of the respondent is amended because the name was spelt incorrectly on the claim. The respondent (ZJ) is to pay the applicants (AQ) \$1,405 by 5 May 2014.

Facts

[1] AQ (the applicants) and ZJ (the respondent) had a verbal agreement for the sale and purchase of lucerne bales at \$95 per bale. The bales were to be paid for by ZJ by way of direct credit to AQ's bank account when the bales were uplifted.

[2] AQ's claim is for \$1,710; that being 18 bales at \$95.

Issues

[3] The issues to be determined are as follows:

- (a) Was it agreed that 32 bales were to be purchased?
- (b) Did the bales have to be a certain quality?
- (c) How many bales did ZJ uplift and how much was paid?
- (d) Did ZJ breach the contract by failing to pay for 32 bales?
- (e) If so, is AQ entitled to claim \$1,710?

Law and Decision

Was it agreed that 32 bales were to be purchased?

[4] The relevant law is the law of contract. A contract is formed when both parties decide to exchange something of value. In order to be bound by a contract, both parties must be certain about the essential terms of the contract. In this case, there is some disagreement about how many bales were to be purchased, how many were uplifted and how many were paid for. I must determine what AQ and ZJ most probably agreed to in their initial discussion.

[5] The applicant was clear that the agreement was for 32 bales because it was necessary for him to know what number of bales he had sold and therefore what number of bales he had left to sell. He states that he set aside 32 bales for ZJ.

[6] ZJ states that the applicant wanted a rough idea of how many bales he would need. He states he could not remember the precise number but 32 sounded about right. He says this number was approximate only and it was not a fixed number of bales that he agreed to purchase. ZJ states that he understood he could purchase bales on an “as needs” basis and there was no fixed number.

[7] I prefer the evidence of the applicant that the contract was for the purchase of 32 bales. I accept that the applicant only sold fixed numbers of bales in order to have certainty of supply for all customers. This makes sense in terms of sound business practice. In addition, ZJ recalls 32 bales being discussed. If ZJ had entered into a contract to purchase bales on an “as needs” basis it is unlikely that there would have been a discussion about 32 bales. Therefore, I find that it was a term of the contract that ZJ agreed to purchase 32 bales.

Did the bales have to be a certain quality?

[8] Both The applicant and ZJ agree that even though it was not discussed the bales had to be of good quality. The quality was important for AQ because they pride themselves on providing a good quality product. The quality was important for ZJ because the lucerne bales were for his brood mares and it is well known they can become ill if they eat lucerne with mould in it.

How many bales did ZJ uplift?

[9] The number of bales uplifted is a matter at the core of this dispute and it is a matter for which neither party has presented any independent evidence.

[10] On the one hand the applicant is adamant that he set aside 32 bales in one pile and that all bales were uplifted and that he can only assume that ZJ uplifted them because there is no other explanation.

[11] On the other hand ZJ is equally adamant that he did not take 32 bales and that he took from one pile and then went to another pile. He states that the bales from the second pile were of poor quality. When ZJ discovered the bales were of poor quality and unsuitable for feeding to his brood mares he states that he stopped uplifting bales. Later in the hearing he indicated that the bales were also unsuitable because his brood mares were still feeding foals and both the mares and the foals would likely die if they ate lucerne with mould. On a

separate occasion ZJ states that he stopped uplifting bales when he shifted his brood mares to X location.

[12] ZJ was unclear precisely how many bales he had taken.

[13] I find that 32 bales were uplifted by ZJ. I prefer the applicant's version of events because he gave clear and consistent evidence. I find that the applicant did set aside 32 bales, that ZJ knew they were set aside for him and that he removed all of them. Again, this makes sense in terms of sound business practice.

[14] I am not persuaded that ZJ's version of events was probable. First, ZJ could not recall exactly how many bales he took and therefore his evidence was not as clear and certain. Second, ZJ says he stopped taking bales because they were of poor quality. However, this is difficult to believe given that it was not raised with the applicant at the time. Indeed, the applicant was only aware of the issue when ZJ filed for a rehearing in January 2014. Given that the quality of the bales was so important to ZJ, it is more likely that he would have raised the matter of quality immediately with the applicant if had he been concerned. The applicant says he would have been very happy to put things right by replacing any substandard bales.

How much was paid?

[15] The applicant claims that ZJ had only paid \$1,330 for 14 bales.

[16] ZJ produced bank statements that show payments of \$1,615 for 17 bales going out of his account. ZJ states that he also paid \$190 cash for the first two bales he uplifted. He says that his son was with him but he did not get a receipt from the applicant.

[17] The applicant offered that he may have made an error and missed the payment of \$285 that showed going out of ZJ's account on 24 May 2010. The applicant also states that he had recently received four payments of \$5 into his account from ZJ. The applicant strongly disputes that ZJ paid him any cash.

[18] Given there is no independent evidence to support the payment of \$285 cash I find that the cash payment was not paid. Therefore, I find there is a total of \$1,635 that has been paid into the applicant's bank account.

Did ZJ breach the contract by failing to pay for 32 bales?

[19] I find that there was a contract to purchase 32 bales, that ZJ did uplift the 32 bales, that he has not paid for 32 bales and he has therefore breached the contract by failing to pay for 32 bales.

If so, is AQ entitled to claim \$1,710?

[20] AQ is entitled to payment for 32 bales which is \$3,040. ZJ has paid \$1,635 and the balance is \$1,405. It is the amount of \$1,405 that AQ is entitled to claim.