DECISION AND ARBITRAL AWARD
UNDER THE DISPUTE RESOLUTION RULES OF THE
FRUIT & VEGETABLE DISPUTE RESOLUTION CORPORATION (DRC)

Date: 29 July, 2020 **Ref. DRC # 20535**

CLAIMANT:
Clarks Summit, PA, United States

RESPONDENT:
Montreal, QC, Canada

I. Election to Arbitrate; Arbitration Agreement; Appointment of Arbitrator

1. I, having been duly nominated and confirmed as the Sole Arbitrator by the Fruit & Vegetable Dispute Resolution Corporation (the "DRC") in the above-referenced arbitration case on May 22, 2020, hereby render the following award. This Award is rendered under the Dispute Resolution Rules of the DRC (the "Rules"), established by the DRC, which provide:

> Article 2 Application
>
> 1) These Rules are incorporated by reference in the Corporation's By-Laws and Operating Rules and their application to disputes between members is a condition of membership in the DRC.
>
> 2) Subject to the Corporation's By-Laws, each member agrees that any dispute, controversy or claim with another member arising out of or in connection with any transaction involving fresh fruits and vegetables as defined in the Corporation's By-Laws shall be resolved exclusively in accordance with these Rules as amended from time to time. Each member further specifically agrees to submit any such disputes not resolved through mediation to arbitration in accordance with these Rules.

2. Both parties were members of the DRC at the time the dispute arose and are therefore bound by these proceedings.

II. Seat of Arbitration

3. In accordance with Article 46 of the Rules, the place and legal seat of this arbitration is Ottawa, Ontario, Canada.

III. Applicable Substantive Law

4. The agreement between the parties does not specify the applicable law. As a consequence, in accordance with Article 63 of the Rules, the applicable law is the Trading Standards, the Rules and Regulations, and the Policies of the DRC.

IV. Applicable Procedural Law

5. Both parties were DRC members at the time the dispute arose, and therefore the applicable procedural rules are the Rules.

6. Specifically, as the amount in controversy in this dispute is, in the aggregate, less than $15,000, in accordance with Article 31(3), the case is to be resolved be the Sole Arbitrator without a hearing.

V. Arbitrator's Jurisdiction

7. The Arbitrator's jurisdiction is based on Article 2 of the Rules.

VI. Statement of Claim

8. The Claimant initiated this arbitration on May 6, 2020, when it filed its Statement of Claim for breach of contract. The Claimant alleges that it sold to the Respondent onions, as reflected in Invoices 50432 and 50433, yet the Respondent failed to pay the full sale price. The Claimant does not seek the full outstanding balance of the invoices, instead seeking $11,419.00 USD.

VII. Defense to the Statement of Claim

9. The Respondent filed its Statement of Defense on May 28, 2020. The Respondent alleges that it gave prompt notice of the high amounts of decay on arrival and that it conferred immediately with The Claimant with respect to the concerns on both Invoices.

10. The Respondent did not file a counterclaim.

VIII. Reply to Defence to the Statement of Claim

11. In its Reply, the Claimant realleged its initial claims. The Claimant submitted no additional evidence with its Reply.

IX. Statement of Facts

12. This section contains a description of the facts that gave rise to this dispute and that the Sole Arbitrator considers relevant for the adjudication of the controversy. The Sole Arbitrator has taken into consideration all the facts, evidence, and allegations presented by the parties, and silence with respect to any particular fact is not an indication that the Sole Arbitrator dd not take such fact into account in coming to her conclusion.

A. Invoice 50432

13. On or about December 11, 2019, the Claimant sold to the Respondent 850 bags of colossal onions, as reflected in Invoice 50432, corresponding to P.O. 60298. The ship date was December 11, 2019, and the arrival date at the destination was December 15, 2019. The salesperson shown on the invoice was "Ms. T."

14. On December 16, 2019, the shipment was inspected in Canada. The inspection certificate shows that the onions were firm and well cured (as to maturity), yellow, bright and clean (as to color), and that the total defects were 9% of which 5% was decay with mold.

15. No other documents specifically address the shipment corresponding to Invoice 50432/P.O. 60298.

16. There is no evidence of an agreement between the parties as to grade.

B. Invoice 50433

17. On or about December 23, 2019, the Claimant sold to the Respondent another 850 bags of colossal onions, as reflected in Invoice 50433, corresponding to P.O. 60308. The ship date was December 18, 2019, and the arrival date at the destination was December 23, 2019. The salesperson shown on the invoice was "Ms. T."

18. On December 23, 2019, the shipment was inspected in Canada. The inspection certificate shows that the onions were firm and well cured (as to maturity), yellow, bright and clean (as to color), and that the total defects were 10% of which 7% was decay with mold.

19. That same day, the Claimant, via "xxx@gmail.com" emailed the Respondent asking, with respect to 60308 "They want to know if you are repacking? Also want to know if you want to settle?"

20. Also on December 23, 2019, Mr. R of the Respondent "I can only settle after I sell them but do [sic] to the severity of the decay…AS HIGH AS 25% I don't think I will get anything more than freight for them."

21. On December 27, 2019, Ms. T, writing from an email xxx@gmail.com wrote to yyy@gmail.com "*Do you have the return on your [P.O.] 60308 the colossal yellow?*"

22. On December 31, 2019, Mr. R of the Respondent "this file also I will be remitting 1.00 FOB all inclusive."

23. On January 8, 2020, the Claimant sent an email to the Respondent stating, in reference to Invoice 50433/P.O. 60308: "…the grower is not accepting the return. Based on the inspection, the market and the damages…The return should be in the area of around $5-6.00 FOB. Anything short of that will most likely be met with resistance from the grower."

24. Also on January 8, 2020, the Respondent stated "Product was out of grade and was sold to mitigate losses AT THE BEST POSSIBLE PRICE with the decay. The returns were 1.00 FOB and paid in Full. There will not be any more money on these files."

25. On January 23, 2020, The Claimant, via Ms. T, emailed the Respondent stating, with respect to P.O. 60308: "Onions etc has accepted your return of 1.00 per bag on your po 60308 attached is their invoice to the Claimant issuing the credit on that file."

X. Analysis

26. The Sole Arbitrator has considered all the submission and the arguments of the parties, and will refer only to those arguments that are relevant to her conclusions and to the adjudication of the dispute. If some facts or arguments are not mentioned in the Arbitrator's reasoning, it is because they do not change the conclusion in this Arbitral Award.

27. Both Invoices 50432 and 50433 involve sales transactions. There is no other written agreement between the parties, so the DRC rules apply as both parties were members of the DRC at the time the dispute arose.

28. It appears that the Claimant was acting as a commission merchant on behalf of a grower with respect to each of the sales at issue.

29. There is no evidence that the parties agreed to a specific grade standard. Accordingly, DRC Good Arrival standards apply. Under those standards, allowable decay for onions is 4%, and the product at issue exceeded that tolerance.

30. With respect to Invoice 50433/P.O. 60308, the evidence demonstrates that on January 23, 2020, the parties agreed to the return of 1.00 USD FOB per bag.
31. With respect to Invoice 50432/P.O. 60298, there is no evidence of an agreement between the parties to a reduced price, nor is there evidence that the decay was so extreme as to merit a reduction in price to 1.00 USD FOB per bag. The decay was 7%, "mostly also showing mold."

32. It is the Respondent's burden to support its returns with evidence. Respondent has shown no accounting for the Sole Arbitrator to analyze the sales, timing, and prices.

33. As a consequence, the Sole Arbitrator rejects the Respondent's return on the products corresponding to Invoice 50432/P.O. 60298.

34. According to the Agriculture and Agri-Food Canada website, the prices the week of December 16, 2019, for comparable conventional onions[17] were:

Onion Type	Size	Market	Avg. Low Price CD	Avg. Low Price USD
Spanish (U.S.)	Bag 50 Lbs Jumbo	Toronto	$19.00	$14.17
Sweet (Peru)	Ctn 40 Lbs Jumbo	Toronto	$37.00	$27.60
White (U.S.)	Ctn 25 Lbs Jumbo	Toronto	$18.50	$13.43
Yellow (Canada)	Ctn 50 Lbs	Toronto	$13.00	$9.70
Spanish (U.S.)	Ctn 50 Lbs Jumbo	Montreal	$18.00	$13.43
Sweet (Peru)	Ctn 40 Lbs	Montreal	$29.75	$22.19
Vidalia (Georgia)	Ctn 40 Lbs Jumbo	Montreal	$35.50	$26.48
White (Washington)	Ctn 25 Lbs Jumbo	Montreal	$16.50	$12.31
Yellow (Quebec)	Bag 10x5 Lbs	Montreal	$12.00	$8.95

35. Atlantic's damages claim in this arbitration is $6.50 FOB per bag (less than the $7.25 original price), which is well below the market prices available for comparable product at No. 1 grade in Canada in the corresponding time frame.

36. As a result, the price paid for Invoice 50432/P.O. 60298 should be $5,525.00. As $850.00 has already been paid, a balance of $4,675 is due and owing by the Respondent to the Claimant.

37. Further, the Claimant's invoices provide that the buyer shall pay all costs of collection. Accordingly, the Respondent is required to pay to the Claimant the $600 DRC filing fee.

XI. Decision and Award

38. For the reasons set forth above, the Sole Arbitrator DECIDES the following:

    a. TO DISMISS The Claimant's claim with respect to Invoice 50433/P.O. 60308;

    b. TO DECLARE that Respondent breached its duty to provide an accounting or other proof of claim with respect to Invoice 50432/P.O. 60298;

    c. TO DECLARE that Respondent breached its duty to pay with respect to Invoice 50432/P.O. 60298;

    d. TO ORDER that the Respondent pay to the Claimant the amount of **$4,675.00 USD** in general damages and the **$600.00 USD** DRC filling fee no later than August 29, 2020;

    e. All other prayers for relied not granted herein are DISMISSED.

Sole Arbitrator Date: July 29, 2020