



“Say Cheese...!”

In the recent case of **Manor Asset Ltd v Demolition Services Ltd [2016] EWHC 222 (TCC)** the fact that the adjudicator had not mentioned in his decision evidence submitted, his decision was enforced by the court as the judge held that the adjudicator's decision was not 'flawed and invalid' and therefore, not a breach of natural justice. However, the judge did recognise that for the 'sake of clarity' the adjudicator should have mentioned the evidence, but given that the adjudicator was generally confined to the question as to whether a milestone had been achieved – overlooking evidence seemed difficult to comprehend when considering the question posed to him, and therefore the natural justice challenge was dismissed.

PAUL WHITTLE
Quantity Surveyor/Contract Consultant
paul.whittle@systech-int.com
+44 (0) 207 940 7656

This was an adjudication enforcement case where Manor Asset challenged the adjudicator's decision on the grounds that he had breached natural justice.

An overview of natural justice and adjudication is set out under s.108(2)(e) of the 1996 Act and under common law:

1. An adjudicator is required to act impartially.
2. Parties have the right to present their case to the adjudicator (an impartial tribunal) and justice must be seen to be done. There must be a balance made between the way in which the adjudicator conducts proceedings and the time constraints placed upon him or her.
3. Key is the adjudicator's conduct, bearing in mind the time constraints placed upon the adjudicator he/she must consider whether there is sufficient time to conduct the proceedings fairly, and if not, whether an extension of time would be prevalent, and if not granted by the parties, whether it necessary to resign.

The enforcement argument was based upon the second point above as Manor Asset argued that the adjudicator's decision was "flawed and invalid" as the adjudicator had not taken into account Manor Asset's evidence and therefore, was a breach of natural justice. A main issue was whether Demolition Services had reached its first milestone on 23 October 2015. Manor Asset argued that the adjudicator had not taken into account the evidence (a witness statement) presented to him. The evidence stated that on 27 October photographs were taken that showed that the first milestone had not been achieved (although Manor Asset had originally concluded that it had). In reaching his decision the adjudicator had to take into account 3 elements:

1. The invoice from Demolition to Manor Asset asserting that the milestone had been reached;
2. A payless notice from Manor Asset asserting only 60% of the milestone had been achieved (which was not served in time); and
3. The witness statement asserting that the 1st milestone still was to be achieved.

At para. 20 of the judgement it sets out that the adjudicator stated in his decision:

"I am satisfied on the balance of probabilities that at 23 October 2015 Demolition Services had passed below the line shown on the photograph incorporated in the Parties' Contract and therefore the milestone had been achieved. Demolition Services was therefore entitled to raise its invoice."

Following which the adjudicator gave his reason for reaching his conclusion; that Manor Asset had not suggested in their payless notice that the milestone had yet to be achieved and although the adjudicator did not mention the evidence (which Mr Justice Edwards-Stuart said the adjudicator should have done "for the sake of clarity"). The adjudicator then gave his reason for reaching this conclusion, namely that there was no suggestion in the payless notice that the milestone had not been achieved. What the adjudicator did not do was mention the evidence about the photographs. Mr Justice Edwards-Stuart said that the adjudicator should have done so and went further to say that there was no further evidence that the milestone had not been achieved and it was simply an oversight by the adjudicator and nothing else to decide.

However, the Judge considered that as there was no other evidence in support of the submission that the first milestone had not been achieved, the adjudicator must have taken it into account because if he had simply overlooked that evidence he would not have thought that there was anything to decide. You do not decide a point and then give a reason for that decision unless there is a point at issue that needs to be decided. The judge mentioned the fact that the adjudicator had listed all of the written submissions which the judge considered on making his decision. The judge saw that "to some extent" this was formulaic, however, he did not believe it was appropriate to dismiss it completely given that the adjudicator was generally confined to the question as to whether the milestone had been achieved – overlooking evidence seemed difficult to comprehend when considering the question posed to him, and therefore the natural justice challenge was dismissed. For the full judgement [click here](#).

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