An adjudicator's tale

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Typical trials and tribulations of an adjudicator

A RECENT matter put before me for a decision, effectively a final account between a subcontractor and a sub-subcontractor, has given me an opportunity to share the pitfalls and characteristics that are still common in a process now over 15 years old.

The referring party had made an application to its chosen nominating body for an adjudicator for matters that had been well rehearsed in various guises; essentially a final account of more than 100 items, some of which had been agreed. The respondent claimed ambush on the contents of the notice and, therefore, that the first nominated adjudicator didn't have jurisdiction — which he agreed to, perhaps too hastily. The referring party duly sought a further nomination. Based on the information to hand, I did not consider this to be an ambush and proceeded with the process under the scheme for construction contracts in the absence of a compliant process under the new construction act.

The respondent continued with its challenges to my jurisdiction and, whilst mindful that under the scheme I couldn't decide this for myself, I did seek approval to do so from the parties collectively — to which only the referring party, perhaps not surprisingly, was keen for me to do. This position was to be maintained throughout the rest of the process with my jurisdiction up in the air, but both parties continuing their involvement through to a decision.

The documents I received followed the format and timescales set down by me with a referral, response, reply, rejoinder et al — much of which was unnecessary and did not add substance to the respective cases of the parties and was also very repetitive.

A request was made by the referring party for a meeting, despite this being the gift of the adjudicator. I reserved my position on this until later in the process as to where and when, although if both parties had insisted one to be necessary I would have firmed this up earlier. In the end, I considered it not to be necessary.

What had come to my particular attention that was very relevant, and in the end pivotal to my decision, was a witness statement as to agreements made that had been reneged upon and which crucially was not dissented from by the other party in its witness statement. This clearly demonstrated that quality of argument, not quantity, is the key to a successful case!

Probably a third of the items in dispute should have been prior agreed by the parties, as they ended up being split down the middle for reasons of proportionality. I was required to give reasons on my decision and duly obliged, and noticed a slip or error which was corrected within the stipulated time, so as not to invalidate my decision.

My fees were paid promptly (despite gripes from the parties' representatives throughout the process) and were probably threefold what they should have been had only the relevant information and arguments been pursued. Adjudicators, by precedent, need to be mindful of going off on a frolic of their own, however, in this instance (and many others in my experience), the party representatives are often guilty of this more. Therefore, on a value for money basis, the actual adjudicator fees were 3% of the monies in dispute and 7% of the final outcome. It would be very interesting to know what the parties' representatives' fees were. I guess they would be perhaps double or treble that above — and without the even greater expense of an adjudicator's meeting had one been necessary. Where adjudication is used to settle a final account, it is questionable as to whether it is the appropriate arena for more complicated cases.

The respondent, by maintaining its challenge to my jurisdiction from the outset, is at liberty to appeal this point through the courts should it so choose. However it does so at the risk of further expense should my decision be upheld, as in the vast majority of such appeals industry wide.

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