

## INCORRECT ADJUDICATIONS

Court enforces adjudicator's decision despite claims it was contrary to rules of natural justice - *Rok Building Ltd v Celtic Composting Systems Ltd (No. 2)* [22.1.10]

An adjudication was decided in Rok's favour and Celtic was ordered to pay certain sums. However, on receipt of the decision, Celtic asked the adjudicator to correct several typographical errors and make some substantive changes in light of various calculations they submitted. Whilst the adjudicator amended the typographical errors, he declined to do anything further, stating that under the contractual 'slip rule' he was only allowed to clarify a simple mistake or ambiguity whereas the other issues went to the substance of his decision.

When Celtic failed to honour the adjudicator's decision, Rok issued enforcement proceedings in the Technology and Construction Court. Celtic argued that the adjudicator had failed to apply the rules of natural justice, as the weight of the evidence was so overwhelming that no adjudicator acting fairly could have reached the decision he did. It also submitted that he had failed to use the slip rule to correct the mathematical errors in the decision.

### Decision

The Judge reiterated that the decision of an adjudicator, acting within their jurisdiction, is enforceable even if they have answered the relevant legal or factual questions incorrectly. Furthermore, the courts would be very slow to characterise "*even glaringly obvious errors*" as breaches of the rules of natural justice.

In this instance, the adjudicator's decision was not one which, on the facts, no adjudicator acting fairly and reasonably could not have reached. The adjudicator had reviewed the evidence and arguments with care and it was unnecessary for his decision to include reasons as to why some evidence was found compelling and other evidence not. The fact that no meeting was held was not obvious evidence that the adjudicator had failed to comply with the rules of natural justice.

Under the slip rule set out in the adjudication procedure, the adjudicator had a discretion either "*... to remove any error arising from an accidental error or omission*" or "*to clarify or remove any ambiguity*". He did not have the right to correct so as to wholly reconsider and re-draft substantive parts of his decision. The adjudicator is best placed to determine whether there really is an 'accidental' error or omission. There was no 'ambiguity' in the adjudicator's decision, nor was there anything obviously accidental in what he had decided insofar as he was asked by Celtic to revisit his decision.

Accordingly, Rok was entitled to summary judgment. That said, Celtic was not left without a remedy, as it could institute arbitration proceedings to produce a final

correction on the state of account between the parties.

## Comment

This decision affirms the general position that, provided the adjudicator had jurisdiction to hear the dispute and there has been no breach of the rules of natural justice, the court will enforce an adjudicator's decision that is erroneous. Furthermore, it will not interfere with an adjudicator's correction of the slip if the slip rule is used to give effect to the decision, rather than as an opportunity to revise substantive parts of the decision or make substantial changes.

Adjudication is a very powerful tool for resolving construction disputes, particularly given the very short procedural timeframe (usually 28 days from when an adjudicator accepts his nomination). This makes it particularly attractive to claimants, who can take as long as they wish to prepare their case, in the knowledge that the defendant will have very little time to investigate and prepare a response. Where, as here, there are limited grounds for challenging the decision, it can stack the odds heavily in the claimant's favour.

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