

TAKING TIMESHEETS SERIOUSLY

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The recent case of *Premier Engineering (Lincoln) Ltd v MW High Tech Projects UK Ltd*¹ is one of several UK Technology and Construction Court cases arising out of the dispute-laden development of an energy-from-waste plant in Hull. The parties' dispute centred on the number of hours worked by certain construction operatives, and therefore the amount due for the provision of that manpower. While the judgment does not contain new law and is highly fact-specific, it serves as a reminder of the importance of ensuring that any contractual arrangements agreed between parties are properly documented to avoid costly issues further down the line. It also demonstrates the importance of ensuring that any contemporaneous records, such as in this case timesheets, are accurate at the time of their creation before signing off on them, as such records may be key evidence in any subsequent dispute concerning the factual situation during a project, and central to substantiating a party's quantum claim.

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THE BACKGROUND

Pursuant to an EPC contract, MW High Tech Projects UK Ltd ("MW") was engaged in the construction of a £150m energy-from-waste plant known as the Energy Works Hull Project ("the Project"). The Project has been beset with difficulties, resulting in multiple claims brought by numerous parties, including a £133m claim arising out of the termination of the EPC contract. The English court has, so far, handed down no fewer than five separate judgments, covering issues ranging from the validity of payment notices², to the nature of works carried out at an energy-from-waste plant³, the jurisdiction of an adjudicator⁴, and most recently, the effect of an assignment of a sub-contract⁵. The issues arising out of the termination of the EPC contract are yet to be determined.

MW initially only engaged Premier Engineering (Lincoln) Ltd (“Premier”) to supply support steelwork for the Project. However, following disputes with its previous sub-contractor, MW engaged Premier to provide labour and materials from time to time, usually specifying the resources required on a weekly basis for the week ahead. By that point the Project was in delay and it was “financially imperative” for MW to advance the works because of the heavy penalties for delays imposed under the EPC contract. On 12 February 2018, a meeting took place between the representatives of MW and the owner of Premier to discuss Premier taking on a greater role in the Project. From that point on, Premier’s presence on site increased significantly, leading to MW describing Premier as “key to our success”.

Timesheets and turnstile data

At the 12 February 2018 meeting, Premier presented a document setting out terms under which it would be prepared to provide its increased services, including that all hours worked by Premier’s operatives would be recorded on signed timesheets. MW did not formally agree with those terms at the meeting but did subsequently order from Premier without proposing alternative terms. The system for payment of Premier’s invoices was that, usually at the end of each week, Premier would present timesheets to MW which set out the hours that Premier’s workforce had worked. The timesheets would then be signed off by someone at MW, and were used by Premier to raise an invoice, as well as to pay its workforce.

On many construction sites, turnstile data, which records times of arrival and departure, is used to check a contractor’s claimed hours. However, while turnstiles were installed at the site in this case, certain work was carried out by Premier’s operatives outside the turnstiles, and Premier considered that the turnstiles did not always function correctly. Premier instead installed a biometric clock to keep a record of hours worked by its personnel.

Despite this, the judge found that MW’s approach to invoices issued by Premier following installation of the biometric clock varied. MW continued to look at the turnstile data internally when considering Premier’s timesheets and invoices, but approved payment of some invoices in full even where the turnstile data apparently supported a reduction of certain invoiced amounts; for other invoices, MW paid reduced amounts based on the data from the biometric clock; and then later, MW applied reductions to invoices based on turnstile data. The parties had discussed the use of turnstile data throughout the period, both in emails and in-person meetings, but no formal agreement was prepared setting out the final position.

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MW’s witnesses explained that MW intended to claw back any overpayments from Premier at a later date and suggested that MW had told Premier of this intention. The judge rejected this evidence, deciding that the explanation for MW’s varied approach to payment of invoices related to MW’s reliance on Premier: MW kept Premier happy (and thus on-site) by paying invoices in full during the period of the Project when Premier was indispensable. Once Premier’s involvement was winding down, MW reverted to reducing invoice payments based on turnstile data.

Termination

Premier argued that, following a “big push” to complete works, on 9 July 2018 MW requested that, other than the QA team, it “remove its labour from site forthwith”. Having little alternative, Premier was obliged to dismiss its workforce, ultimately agreeing (following picketing) to pay three weeks’ pay in lieu of notice, which it contended that MW had agreed to reimburse. However, MW argued that it did not instruct Premier to withdraw its labour and denied agreeing to cover the additional three week’s pay for Premier’s workforce.

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Further invoices were raised by Premier, but although some payments were made in relation to pre-9 July 2018 invoices, significant sums remained outstanding. After Premier removed QA documentation from the site, MW agreed to pay £850,000, leaving the final valuation and payment of Premier’s entitlement to be negotiated. The negotiations failed and Premier commenced proceedings.

THE JUDGMENT

As Mr Justice Stuart-Smith noted, the various disputes between the parties largely resulted from an absence of formality in making contractual arrangements. For instance, MW did not formally accept the terms on which Premier was prepared to increase its presence on site as proposed at the meeting on 12 February 2018.

However, by placing an order for labour, materials and plant, the judge considered that MW accepted Premier’s terms through conduct. Similarly, in April 2018 the parties discussed the basis on which Premier would be paid by reference to a document which referred to timesheets and biometric data, but not turnstile data. However, there was no formal acceptance by MW of the agreement. And finally, the parties had failed to record any agreement as to payment of further amounts to picketing ex-Premier employees, with the judge noting “a remarkable absence of documentation surrounding this episode.”

In a highly fact sensitive judgment, Mr Justice Stuart-Smith held that the parties had agreed that:

- MW would provide Premier with at least one week’s notice of termination;
- Labour would be valued by reference to the timesheets signed by MW, checked against data obtained from the biometric clock but not data from the turnstiles; and
- MW had agreed to contribute £85,000 to end the picketing in July 2018, but not to reimburse Premier for three week’s wages.

Mr Justice Stuart-Smith noted that prior to the introduction of the biometric clock, the timesheets were the “best evidence of hours worked by Premier’s workforce”, and indeed, following an initial discrepancy between the biometric clock data and timesheet hours, there was a reasonably close correlation between biometric clock hours, timesheet hours and invoiced hours. As a result, Premier was entitled to recover on the basis of timesheet hours, subject to checks against biometric data where it was available.

CONCLUSION

This decision demonstrates the importance of clearly recording contractual arrangements, even (and perhaps especially) in circumstances where projects are fast-moving and commercial pressures mean that compromises must be made to ensure that deadlines can be met.

Mr Justice Stuart-Smith's judgment also emphasises that parties should treat the system of checking and signing off on timesheets seriously. As he noted, such a system is universally intended to guard against corruption and ensure that sub-contractors are paid sums to which they are genuinely thought to be entitled. Because of that, timesheets are therefore the primary source of evidence for the parties and the court. Simply rubber-stamping timesheets without carrying out any meaningful check subverts the purpose of the system, and as this case shows, deliberately overpaying in the hope of clawing back monies later, stores up trouble for the future. The time to dispute the invoices was when the parties had current knowledge of each invoice and the work carried out on site, not after the invoices had been paid and the final account was being calculated.

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This article was written by London Dispute Resolution Co-Head Rebecca Williams, Senior Associate Mark McAllister-Jones and Idil Yusuf, a trainee solicitor in our London office.

[1] [2020] EWHC 2484 (TCC)

[2] *C Spencer Ltd v MW High Tech Projects UK Ltd* [2020] EWCA Civ 331, see our briefing note [here](#)

[3] *Engie Fabricom (UK) Ltd v MW High Tech Projects UK Ltd* [2020] EWHC 1626 (TCC)

[4] *MW High Tech Projects UK Ltd v Balfour Beatty Kilpatrick Ltd* [2020] EWHC 1413 (TCC)

[5] *Energy Works (Hull) Ltd v MW High Tech Projects & Ors* [2020] EWHC 2537 (TCC)

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