



LEGAL BRIEFING

Anglian Water Services Ltd v Laing O'Rourke Utilities Ltd [2010] EWHC 1529 (TCC), Mr Justice Edwards-Stuart

The Facts

AWS engaged Laing to design and construct several tanks at a sewage treatment works. The contract incorporated the terms of the 2nd Edition (1995) of the NEC Engineering and Construction Contract (the "Contract"). Disputes arose under the Contract and were referred to adjudication. Under clause 93.1 of the Contract, a party could serve a notice of dissatisfaction of the decision, within four weeks. Clause 13 of the Contract contained specific provisions on service of communications, in particular the addresses of AWS and Laing, where the communications were to be sent.

AWS served a notice of dissatisfaction, within the timescale, to Laing's solicitors, together with a notice to refer a dispute to arbitration. This was acknowledged by Laing's solicitors that afternoon. The solicitors forwarded the documents onto the relevant persons in Laing. Following the expiration of the four week deadline, Laing's solicitors said they would have to take instructions as to whether they were instructed to accept service, and asking for confirmation that the clause 93.1 notice had been served on Laing directly. AWS commenced proceedings under CPR Part 8, for a declaration that the notice had been validly served.

The Issues

- (i) Was delivery of the notice to Laing's solicitors an effective communication under the Contract?
- (ii) Was the notice a communication "relevant to the adjudication" such that it could be served at Laing's solicitors' office and not Laing's office?
- (iii) Even if delivery of the notice was not effective, did the fact that it was received by the relevant individuals at Laing within the four week period make it an effective communication?
- (iv) Had the notice not have been validly served, would an extension of time be granted under section 12 of the Arbitration Act 1996?

The Decision

The Judge concluded as follows:

- (i) Yes. Compliance with the mode of delivery specified in clause 13.2 was the only means of achieving or securing effective delivery of a communication under the Contract because the communication only takes effect when it is received at the prescribed address. However, an email from AWS' solicitors relating to the adjudication had asked Laing's solicitors to confirm that they would accept service of the referral notice and "*any other documentation relevant to the adjudication*". Laing's solicitors replied "*confirmed*". This was sufficient notification that Laing's solicitors office would be the address for service of communications relevant to the adjudication, and not Laing's own office;
- (ii) Yes. In the absence of a notice served within the 4 week period, the adjudicator's decision becomes final and binding on the parties. A valid notice served in time was therefore relevant to the adjudication because it prevented the decision becoming

final and binding;

- (iii) No. The contractually prescribed method of service cannot be overcome by the fact that the documents were passed to the relevant individuals in Laing; and
- (iv) Yes. There was good reason that the notice was not sent to Laing's office and the notice was in fact received by the relevant individuals at Laing in time. On these facts it would be unjust to hold AWS to the strict provisions in relation to service.

Comment

This case is rare, in that it gives detailed consideration to the service of notices, under a widely used form of contract. The Judge took a strict line on the interpretation of the service provisions in the contract. Parties should be loath to ignore this guidance when it comes to serving notices. As this case demonstrates, without express or implied permission from the other party, it may not be enough to rely on the notices making it into the hands of the correct people. Parties have to make sure that the notice gets to the correct people through the correct channels. A failure to do this may result in what would have been a valid notice, being invalidated. Whilst under the Arbitration Act you can apply for an extension of time for service, the threshold criteria the court will apply is a high one.

Chris Farrell
July 2010