



PJE International
698 Uppingham Road
Leicester, LE7 9RN

Visit:
pjeinternational.com

Call:
0116 241 5599

Understanding
what makes a
pay less notice
valid is critical
to business
profitability

THE ADJUDICATOR'S DECISION IS FINAL....SORT OF

As many sub-contractors are increasingly aware, for a main contractor to legally withhold funds they must first issue a valid payer or pay less notice. Without this, an Adjudicator will almost always side with the sub-contractor and rule that full and final payment must be made.

What happens if the main contractor disagrees with the amount specified in the application? If a ruling has already been made, can they commence a second adjudication and either continue to withhold payment, or at least reclaim some of the funds already paid?

This was the situation facing Harding, a contractor engaged by Paice, under a JCT Intermediate Form of Building Contract 2011, to carry out the construction and fit-out of three residential houses. In line with the agreed contract, Harding had served a notice of termination and were therefore entitled to submit an account for the value of the work carried out. However, Paice refused to pay the outstanding amount of nearly £400K and argued that a valid pay less notice had been issued.

The fact that the Adjudicator sided with the sub-contractor isn't unusual in these circumstances, but the reasoning certainly was. Despite the lack of case law on the subject, the Adjudicator decided that the pay less notice was invalid simply because Paice had failed to set out how the sums within it were calculated.

How did Paice react? In an apparent attempt to evade the Adjudicator's decision, they launched a new adjudication relating to the actual value of work undertaken. And, although Harding argued that the dispute had already been settled, the judge ruled that they were only entitled to "the amount properly due in respect of the account.

In reality, the amount due was never actually considered in the original adjudication, and so Paice would need to pay Harding the sum originally awarded and then hope for reimbursement after the second adjudication. Whilst it could certainly be argued that the final ruling was fair and equitable for both parties, it's also worth remembering that the issue of the funds "properly due" would not have been considered at all if there had been no payment or pay less notice served.

LESSONS TO BE LEARNT

There are several lessons to be learnt from this case, including the fact that for an application to be valid it must be precise accordance with the payment conditions of the contract. However, if the main contractor fails to serve a Payment Notice in response to a Contractors Interim Payment Application, it will be taken that they have agreed the value stated in the application, and this cannot be raised again in a second adjudication.

To avoid running the risk of having large amounts of money deducted from your account, it's vital that you are fully aware of:

- Your obligations when making applications for payment
- The dates on which the application can be made
- The 'Due' date (the main contractor must issue a payment notice within 5 days of this)
- The latest date upon which the main contractor is able to give you a pay less notice
- Your entitlements under the contract in respect of payment



For over 25 years PJE International has been helping sub-contractors maximise their profits by ensuring full and timely payment. Even more important, we can help avoid issues arising in the first place with our innovative risk assessment and process analysis tools and advice.

REDUCE RISK AND
PROTECT PROFITS

CALL 0116 241 5599