

Adjudication: Claims for money from both parties

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In previous recent articles, I have considered the responding party's general right to run any defence in adjudication, and the circumstances in which the responding party may set off a sum against the amount due under an adjudicator's decision, particularly in relation to extension of time cases. I now turn to the position relating to apparently straightforward monetary claims.

Adjudications are often concerned with the valuation of a contractor's or sub-contractor's account, either interim or final account valuation. Frequently a contractor or sub-contractor starts the adjudication claiming a sum of money, although sometimes an employer or contractor will take the initiative and refer the dispute to adjudication to try to establish that its valuation is correct.

Taking the straightforward example of a contractor referring an interim valuation dispute to adjudication, the dispute will normally be as to the correct valuation of the account, with the contractor claiming by way of relief payment to it of the sum of £x or such other sum as the adjudicator may decide is due. The other side of the coin is the employer's contention that no sum is due, or that payment is in fact due to the employer because of earlier overpayment and/or items it is entitled to set off.

Inherent in any adjudication of this type is that although the referring party seeks money, the question that the adjudicator resolves may result in money being due to the other party. It is not always understood by referring parties or by adjudicators that where a contractor refers the dispute and seeks payment of £x or such other sum as the adjudicator may decide, the adjudicator may not only decide that £y is due to the employer but may also order that the contractor pay £y to the employer.

It will normally be futile for the referring contractor in these cases to frame the description of the dispute and the relief in terms that are limited to the question how much money is due from the employer to the contractor. If the dispute is as to the correct valuation of the account and what sum is due having regard to payment already made, and that is what the adjudicator determines, then the decision can include an order for money to be paid either way.

In the *Workspace* case, Workspace engaged YJL to carry out construction works. Two disputes were referred to adjudication and then to arbitration for a final determination, which resulted in an amount awarded in favour of Workspace. YJL made partial payment of the amount of the arbitral award but withheld a sum arising out of an adjudicator's decision in a third adjudication; this adjudicator's decision pre-dated the arbitral award. Coulson J held that YJL was entitled to make this set-off, but the main interest of this case for present purposes concerns some remarks made *obiter* in relation to the decision in the third adjudication.

Workspace brought the third adjudication in the following circumstances. The architect had issued interim certificate 27 in a negative sum, so monies were due to Workspace rather than to YJL under this certificate. YJL refused to pay, so Workspace went to adjudication

claiming the amount on the certificate, £230,799. In the event, the adjudicator decided that the negative value of the certificate should have been £77,371.70. YJL had already repaid £126,192, so rather than monies being due to Workspace, £56,143.35 (including VAT) was due from Workspace to YJL.

The adjudicator did not order Workspace to pay the sum of £56,143.35 to YJL, stating:

“Whilst it follows from my finding that YJL should be entitled to a further amount of £48,820.30 [net of VAT], due to the scope of the adjudication notice and the redress sought, I considered that I was unable to decide or direct that the amount was due.”

Coulson J, however, said that the adjudicator was wrong on this point; the adjudicator could have and in fact did decide that the amount was due and could also have directed that the amount he decided was to be paid by Workspace to YJL.

The dispute in this case (as is typically the position) encompassed not just the interim valuation of the account, but what balance was due, taking into account payments already made. Inherent in the resolution of this type of dispute is the need to determine by whom the balance is to be paid to whom.

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