

COMMONWEALTH OF PENNSYLVANIA

PMC MECHANICAL CONTRACTORS, INC. : BEFORE THE BOARD OF CLAIMS
 :
VS. :
 :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF GENERAL SERVICES : DOCKET NO. 2045

FINDINGS OF FACT

1. Plaintiff, PMC Mechanical Contractors, Inc. (hereinafter “PMC”) is a mechanical contractor engaged in the installation of heating, air conditioning and plumbing systems in commercial and industrial buildings and has been in business since 1977. (N.T. 7-8)

2. On September 23, 1992, PMC and the Commonwealth of Pennsylvania, Department of General Services (hereinafter “Department”), entered into a standard form of agreement between the Department and PMC whereby PMC agreed to perform the HVAC work in connection with the replacement of two (2) boilers at the Dunmore District Office 4-0 (hereinafter “project”). (N.T. 9-12; P-1)

3. The project involved installing two new boilers, two new hot water pumps, a chiller, two chilled water pumps, extending the controls from the buildings existing pneumatic control system, placing thirty-eight (38) fan coil units and converting a two pipe dual temperature system to a four pipe heating and chilled water system. (N.T. 9)

4. The total sum to be paid to PMC under the contract was \$324,500.00. (N.T. 12)

5. The office had an existing pneumatic control system including an air compressor, a refrigerator dryer, building control panes, and a series of pressure regulators and other devices to inject the correct pneumatic pressure into the control system. (N.T. 9-11)

6. PMC was not required to modify or replace the existing building controls. (N.T. 9-11)

7. PMC’s claim is a result of a freeze up in a unit ventilator which PMC installed in the “print room” in the basement level of the project. (N.T. 11-13)

8. PMC installed the unit ventilator in the print room at some point prior to November 22, 1993, and the freeze up occurred on Monday, January 24, 1994 between 12:00 a.m. and 5:00 a.m. (N.T. 13)

9. The freeze up occurred in the heating coil of the unit ventilator. (N.T. 18)
10. All three pipes at the top of the heating coil, known as return bends, ruptured. (N.T. 26)
11. The ruptures in the return bends were caused by freezing. (N.T. 26)
12. Industrial Valley Controls (hereinafter "IVC") was PMC's "controls" subcontractor for the project. Ed Plotts is IVC's principal. (N.T. 29)
13. A few days after the freeze up, Mr. Pagel of PMC and Mr. Plotts of IVC visited the site and reviewed the installation of the three way valve leading to the heating coil, and determined that the valve was installed properly. (N.T. 188)
14. The heating coil and the unit ventilator were removed by representatives of PMC in late February, 1994, while at the same time the three way valve connected to the heating coil was also removed. (N.T. 188-190)
15. The heating coil was delivered to James Kita, of Consulting Engineers, Inc., an engineer hired by CNA, PMC's insurance company, to determine the cause of the freeze up. (N.T. 188-190)
16. PMC installed a new heating coil and unit ventilator in late April, 1994, and the three way valve leading to the heating coil was also reinstalled at that time. (N.T. 190, 194)
17. PMC claims it incurred \$40,713.48 in repair and clean up costs as a result of the unit ventilator freeze up and interest on that amount from May 1, 1995, to the date of trial at six percent (6%) per annum or \$6,056.37, making the total amount of PMC's claim \$46,769.85. (N.T. 35)
18. IVC fixed an existing building control as part of the clean up operation. (N.T. 29)
19. The total amount to be paid IVC as the subcontractor is \$7,655.96, representing a claim by IVC for \$6,959.96 and a mark up of ten (10%) percent or \$696.00 by PMC, plus interest at the rate of six (6%) percent per annum from May 1, 1995 until paid. (Exhibit C)
20. Mr. Robert Huylo, the professional for the project, has no idea as to what caused the unit ventilator to freeze up. (N.T. 138, 141, 147-149)
21. James Kita is a professional engineer licensed in the Commonwealth of Pennsylvania and the State of New York. (N.T. 195)

22. During 1994 and 1995, Mr. Kita was employed by Consulting Engineers, Inc., a forensic engineering services firm. (N.T. 196)

23. Mr. Kita was hired initially by CNA to investigate the possible cause of the freeze up, and in doing so he reviewed numerous documents, including catalog cuts for the unit ventilator, shop drawings, Mr. Huylo's reports, and various correspondence, forwarded to him by CNA and PMC. (N.T. 201-202)

24. Mr. Kita also performed metallurgical and other tests on the coil. (N.T. 200)

25. Mr. Kita was then unable to make a precise determination as to the actual cause of the freeze up; however, he was able to rule out PMC's installation of the unit ventilator as a possible cause of the freeze up. (N.T. 203-204)

26. PMC failed to meet its burden of proof with regard to all damages alleged.

CONCLUSIONS OF LAW

1. The Board of Claims has jurisdiction over the parties, as well as the subject of the claim, pursuant to 72 P.S. §4651-4.

2. On September 23, 1992, PMC and DGS entered into a binding contract whereby PMC agreed to perform the HVAC work in connection with replacement of two boilers at the project.

3. A freeze up of the unit ventilator occurred on January 24, 1995.

4. The cost of the repair and clean up to PMC totaled \$40,713.48, and such costs are outside the scope of the work contemplated by the contract.

5. PMC failed to meet its burden concerning the amount of damages it is entitled to as a result of the freeze up and failed to supply adequate testimony concerning the amount of work that allegedly was done by its employees with respect to the clean up and repair.

6. PMC is entitled to compensation in the amount of \$7,655.96 representing payment it made to IVC, its subcontractor, and a ten (10%) percent mark up, plus interest at the rate of six percent (6%) per annum from May 1, 1995 until paid.

OPINION

The Plaintiff is PMC Mechanical Contractors, Inc., a Pennsylvania corporation engaged in the business of mechanical contracting. PMC brought the instant action against the

Defendant, the Commonwealth of Pennsylvania, Department of General Services, for alleged costs that were attributed to the repair and clean up of damage done by a ventilator coil freeze up at the Dunmore PennDOT District office. The Plaintiff believes that the repair and clean up costs are outside the scope of the contract that was entered into by and between the Plaintiff and the Defendant for the replacement of two boilers at the Dunmore District office. The question before the Board is whether or not the actions taken by PMC were within the scope of the contract and, if not, what damages, if any, is PMC entitled to.

It is well established that the words of a contract should be given their normal, usual, plain and ordinary meaning. See Dubrook, Inc. v. Department of Transportation, Board of Claims Docket No. 1011 (1992). While interpreting the provisions of the contract, one must adopt a translation which is reasonable, logical and presumable. Grant v. Southwestern Pennsylvania Water Authority, 601 A.2d 1048 (1992). A contract should not be rewritten as to be in conflict with the straight forward every day meaning of the words which are used. Lindstorm v. Pennswood Village, 612 A.2d 1048 (1992).

Clearly, any reading of the contract based upon the above case law would indicate that the repair and clean up of a unit coil freeze up was not contemplated by the parties, and was not included in determining the compensation of the Plaintiff. As a result, it is quite clear that the clean up costs and repair costs associated with the coil freeze up are outside the terms of the contract and, therefore, PMC should be compensated for its efforts since PMC did not cause it to rupture.

However, the facts as presented show a minimal use of PMC employees for the actual clean up activity and replacement of the damaged unit ventilator. PMC presented little, if any, evidence to show what activities it was involved with in the replacement of the unit ventilator and

what took place during the replacement. There was no testimony offered as to why the damages involved totaled over \$40,000.00, which is more than ten (10%) percent of the entire job. It is the belief of the Board that the numbers are exaggerated based upon the lack of evidence given at the hearing. Because the damages were not presented in a clear and concise manner, the Board is inclined to award no damages. However, it is clear from the record that PMC paid its subcontractor, IVC, an additional amount of money to perform work that was totally unrelated to the project, namely the adjustment to the existing building control. As a result, the Board is inclined to award to PMC the sum of \$7,655.96, representing the invoice to IVC of \$6,959.96 and the requisite ten percent mark up to PMC of \$696.00.

ORDER

AND NOW, this day of August, 1998, the Board finds in favor of the Plaintiff, PMC Mechanical Contractors, Inc., and against the Defendant, Commonwealth of Pennsylvania, Department of General Services, in the amount of \$7,655.96 with six (6%) percent interest from September 15, 1995, the date of commencement of this action as filed with the Board of Claims.

Upon receipt of said award, Plaintiff shall forthwith file with the Board of Claims, a Praeceptum requesting that the case be marked “closed, discontinued and ended with prejudice”.

Each party to bear its own costs and attorney fees.

BOARD OF CLAIMS

David C. Clipper
Chief Administrative Judge

Louis G. O’Brien, P.E.
Engineer Member

James W. Harris
Citizen Member

Opinion Signed
August 26, 1998