

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Butt Construction Co., Inc.) ASBCA No. 52081
)
Under Contract No. F33601-97-C-W028)

APPEARANCE FOR THE APPELLANT: William T. Butt, Jr.
President

APPEARANCES FOR THE GOVERNMENT: COL John M. Abbott, USAF
Chief Trial Attorney
Jean R. Love, Esq.
CAPT Gregory A. Baxley, USAF
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE DICUS*
ON RESPONDENT'S MOTION TO STRIKE
AND REQUEST FOR AMENDMENT OF THE DECISION ON RECONSIDERATION

In *Butt Construction Inc.*, ASBCA No. 52081 (19 January 2000), the Board denied the parties' cross motions for summary judgment. Respondent thereafter filed a motion for reconsideration. The Board admitted affidavits from appellant in response to the motion and relied on them in affirming its decision. *Butt Construction Co., Inc.*, ASBCA No. 52081 (18 February 2000). Respondent now argues that the affidavits were improperly admitted and seeks to have the affidavits stricken from the record. It also seeks "amendment" of the Board's reconsideration decision pursuant to Board Rule 29, "Motion for Reconsideration."

The "amendment" respondent requests is the granting of summary judgment in its favor, a result that can only be achieved through the process of reconsidering the Board's reconsideration decision. Moreover, respondent's motion purports to be filed "pursuant to ASBCA Rule 29." As presented, respondent's motion is indistinguishable from a motion for reconsideration. Accordingly, we treat it as a motion for reconsideration. Assuming, *arguendo*, that the affidavits were improperly admitted, Board Rule 29 does not provide for reconsideration of a Board decision on an earlier motion for reconsideration. *TPI International Airways, Inc.*, ASBCA No. 46462, 98-2 BCA

* The judge who authored both the motion and reconsideration decisions has been recused because he served as the settlement judge in an unsuccessful alternative dispute resolution proceeding.

¶ 30,074. Consequently, even if we were to grant the motion to strike, we could not reverse our earlier decisions and grant summary judgment for respondent “pursuant to [Board] Rule 29,” because that Rule does not contemplate multiple motions for reconsideration. Respondent’s motion is denied.

Dated: 29 March 2000

CARROLL C. DICUS, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

MICHAEL T. PAUL
Administrative Judge
Acting Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 52081, Appeal of Butt Construction Co., Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals