

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
International Computers & Telecommunications, Inc.) ASBCA No. 51725
)
Under Contract No. DAHC77-96-C-0004)

APPEARANCE FOR THE APPELLANT: Mr. Thierry Janssens
Senior Vice President

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
LTC Richard B. O'Keeffe, Jr., JA
MAJ Jeffrey D. Stacey, JA
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE DICUS
ON APPELLANT'S MOTION FOR RECONSIDERATION

Appellant has moved for reconsideration of our decision denying its appeal, *International Computers & Telecommunications, Inc.*, ASBCA No. 51725, 12 September 2000, in which we interpreted the contract as unambiguous in its requirement for a price adjustment when certain exchange rates fluctuated by more than 20 percent regardless of whether all appellant's payments had been made in dollars. Appellant alleges that our decision contains factual errors. It also disagrees with our interpretation of the clause at issue in the dispute. Respondent contends that no factual errors were made and points out that appellant's disagreement with our interpretation of the relevant clause raises no legal theories not previously addressed.

In the decision, we commented on appellant's failure to provide evidence in support of its position that all its payments were made in dollars. With its motion, appellant has filed copies of invoices and checks purporting to document that appellant made payments to its subcontractor, Orange Systems, only in dollars. Respondent objects to receipt of the documents on the grounds that they are not newly discovered, but were available before the evidentiary record was settled; and that the documents would not alter the outcome. We agree with respondent and we will not reopen the evidentiary record. Appellant does not assert the relevant documents were not available, but that it "did not think that as a small business the technical legal procedures would be strictly enforced against us" (app. mot. at 1). However, as mere assertions are not a basis for findings of fact, we do not consider the requirement for evidence to support the facts alleged in a party's claim to be a "technical legal procedure." As to whether the documents would affect the outcome, we held that even if its factual assertions were true,

it could not prevail (“Assuming, *arguendo*, that ICT had received and made all payments in dollars . . . this is not the dispositive issue.” Slip opinion at 5). This was because we interpreted the provisions at issue in the dispute to unambiguously provide for an adjustment whenever the currency rate fluctuated by 20 percent, regardless of whether payments were made in the fluctuating currencies.

As to the correctness of our factual findings, we believe appellant misperceives finding 9. *Id.* at 4. That finding merely established that there had been currency fluctuations, a matter appellant does not deny. The second alleged factual error relates back to its failure to submit evidence on its payments, a matter addressed above in relation to our reasons for not accepting the copies of invoices and checks. The third alleged factual error is principally directed to our interpretation of the provision in dispute, which it considers unreasonable. It argues that we are also unreasonable if we “expect that *any* small business in this country would have accepted this contract if it had known that that was how this contract was to operate.” We have no evidence to support this last contention. (App. mot. at 3) Finally, we have examined our interpretation of the contract and believe it to be in consonance with the rules of contract interpretation articulated by our own precedents and those of our appellate court, examples of which are cited in our original decision.

After consideration of appellant’s motion, we affirm our earlier opinion.

Dated: 9 November 2000

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

(Signatures continued)

I concur

I concur

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

EUNICE W. THOMAS
Administrative Judge
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. 51725, Appeal of International Computers & Telecommunications, Inc., rendered in conformance with the Board's Charter.

Dated:

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