

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
The Swanson Group, Inc.) ASBCA No. 52109
)
Under Contract No. N68711-91-C-9509)

APPEARANCE FOR THE APPELLANT: Mr. Johnny Swanson, III
President

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
Navy Chief Trial Attorney
John S. McMunn, Esq.
Senior Trial Attorney
Naval Facilities Engineering
Command
West Coast Litigation Team
Daly City, CA

OPINION BY ADMINISTRATIVE JUDGE TODD

The United States Court of Appeals for the Federal Circuit remanded this appeal to the Board in *England v. Swanson Group, Inc.*, 353 F.3d 1375 (Fed. Cir. 2004). The Court vacated our decision awarding appellant \$278,076.25 in termination settlement costs in *Swanson Group, Inc.*, ASBCA No. 52109, 02-1 BCA ¶ 31,836, *modified on reconsider.*, 02-2 BCA ¶ 31,906, with direction to dismiss the appeal for lack of jurisdiction. The Court held that the Board should have dismissed appellant's appeal for lack of jurisdiction due to appellant's failure to submit a termination settlement proposal that could have ripened into a claim. The Court stated that the lack of jurisdiction over appellant's appeal does not bar appellant from submitting a termination settlement proposal to the contracting officer at this time.

Pursuant to Board Rule 32 appellant has submitted a report to the Board concerning compliance with the Court order remanding the case and a copy of its termination settlement cost proposal submitted to the contracting officer on 18 March 2004. Appellant filed a copy of a motion, dated 6 November 2003, that it stated was sent to the Federal Circuit before its decision was rendered, but returned for failure to have been filed by counsel. Appellant took the position that the Board properly exercised jurisdiction allegedly authorized by the Board's decision in *Swanson Group*, ASBCA No. 44664, 98-2 BCA ¶ 29,896, which held that the government's termination for default was converted to a termination for convenience of the government. Appellant argued that

a claim was submitted originally, and the Board remanded the matter to the parties for consideration of the amount to which appellant was entitled.

Appellant is mistaken as to the nature of this appeal. As we stated in *National Interior Contractors, Inc.*, ASBCA No. 46012, 96-2 BCA ¶ 28,560:

In requesting that we determine “quantum,” appellant seems to believe that following the setting aside of the default termination, our jurisdiction continued as to the amount due for the termination for convenience. That is incorrect. Our jurisdiction was limited to the merits of the default termination. The contracting officer’s decision terminating the contract for default constituted the assertion of a claim by the Government. Resolution of the appeal from that decision disposed of that claim. The resolution in favor of appellant, converting the termination into one for the convenience of the Government, creates a potential for money claims on the part of either the contractor or the Government. Such claims are separate and distinct from the Government’s original, non-monetary claim against appellant for default termination of the contract.

96-2 BCA at 142,588 (citations omitted).

When we sustain the adequacy of a monetary claim in an appeal as to entitlement only, the matter is remanded to the parties for determination of quantum, and the Board retains jurisdiction. The assignment of a new docket number is then a matter of administrative docket management procedure that does not affect the nature of subsequent proceedings as to quantum. *LA Limited, LA Hizmet Isletmeleri*, ASBCA No. 53447, 04-1 BCA ¶ 32,478; *Swanson Group, Inc.*, ASBCA No. 53496, 02-1 BCA ¶ 31,800. We distinguish these circumstances from the appeal here involving a termination settlement proposal that follows appeal of a default termination. Appellant’s appeal for conversion of the government’s termination for default is not equivalent to a claim to recover termination for convenience costs. *McDonnell Douglas Corporation v. United States*, 37 Fed. Cl. 285, 291 (1997), *rev’d on other grounds*, 182 F.3d 1319 (Fed. Cir. 1999), *cert. denied*, 529 U.S. 1097 (2000). Appellant did not submit a convenience termination claim in ASBCA No. 44664. The Board did not remand the matter to the parties for negotiation.

Pursuant to the Court's mandate, which issued 1 March 2004, the appeal is hereby dismissed without prejudice from the Board's docket.

Dated: 22 April 2004

LISA ANDERSON TODD
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

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

RONALD JAY LIPMAN
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. 52109, Appeal of The Swanson Group, Inc., rendered in conformance with the Board's Charter.

Dated:

DAVID V. HOUBE
Acting Recorder, Armed Services
Board of Contract Appeals