ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --	)	
	)	
Raytheon Company	)	ASBCA No. 54907
	)	
Under Contract No. DAAH01-96-C-0114	)	

APPEARANCES FOR THE APPELLANT:

Karen L. Manos, Esq.
Christyne K. Brennan, Esq.
Gibson Dunn & Crutcher LLP
Washington, DC

APPEARANCES FOR THE GOVERNMENT:

E. Michael Chiaparas, Esq.
DCMA Chief Trial Attorney
Lawrence S. Rabyne, Esq.
Trial Attorney
Defense Contract Management Agency
Arlington Heights, IL

OPINION BY ADMINISTRATIVE JUDGE DELMAN ON THE GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT

This appeal was remanded to the Board pursuant to a judgment of the United States Court of Appeals for the Federal Circuit in *Gates v. Raytheon Company*, 584 F.3d 1062 (Fed. Cir. 2009), *rehearing en banc denied*, 636 F.3d 1363 (Fed. Cir. 2011). The Court reversed the Board's decision in *Raytheon Co.*, ASBCA No. 54907, 08-1 BCA ¶ 33,859, and held that Raytheon Company (Raytheon or appellant) is liable to the government for interest compounded daily under the Cost Accounting Standards ("CAS") statute and CAS clause for violation of CAS 413. The Court directed the Board to enter judgment for an amount of interest calculated in a manner consistent with its opinion.

By order dated 30 March 2011, the Board directed the parties to stipulate to the amount of interest due, but if they were unable to agree they were to file separate interest calculations with supporting briefs. The parties were unable to agree on the interest due and filed separate briefs and calculations. By letter dated 27 May 2011, the government filed a motion for summary judgment and a brief in support of its interest calculation. By letter dated 31 May 2011, appellant opposed the government's motion and filed its own calculation of interest and supporting brief. In accordance with the Board's order, on 5 August 2011 the parties filed a "Joint Stipulation Regarding the Calculation of Interest" ("Stipulation") setting forth the interest due in accordance with their respective positions.

We find that there is no dispute of material fact on the record, and the interest question is amenable to resolution through summary judgment.

The pertinent undisputed facts are briefly stated as follows. Raytheon sold two business segments, "Montek Aerospace" (Montek) on 1 December 1998 and "Raytheon Engineers and Constructors" (RE&C) on 7 July 2000. Each sale constituted a segment closing under CAS 413.50(c)(12). Each segment had a pension fund surplus as of the date of the sale/segment closing, for which Raytheon owed the government an adjustment. After a period of negotiations, the parties agreed that the government's share of the pension surplus for Montek was $487,306 and for RE&C was $14,681,268. The government demanded payment of these amounts plus interest under the CAS statute and CAS clause. Raytheon paid these amounts to the government on 21 September 2004 but refused to pay any interest, contending there was no CAS violation. The Federal Circuit held that Raytheon's failure to timely pay the adjustment to the government was a violation of CAS 413, resulting in increased costs and entitling the government to interest, compounded daily, resulting from the violation.

What the Court did not decide—and what is before us for decision—is over what period this compound interest is measured. Title 41 U.S.C. § 422(h)(4) (subsection (h)(4)), recodified as 41 U.S.C. § 1503(c)[1] provides for interest as follows:

> (4) The interest rate applicable to any contract price adjustment shall be the annual rate of interest established under section 6621 of Title 26 for such period. Such interest shall accrue from the time payments of the increased costs were made to the contractor or subcontractor *to the time the United States receives full compensation for the price adjustment.*

(Emphasis added)

[1] Pub. L. No. 111-350, 2011 U.S.C.C.A.N. (124 Stat.) 3677, recodified the laws relating to public contracts in January, 2011. It provides in pertinent part at Section 2(b) that "In the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections...."

Contentions of the Parties

Based upon the parties' Stipulation, it appears that they agree that the date the compound interest begins to accrue is the date of segment sale (stip. ¶¶ 3, 10), and based upon that stipulation we so find. The parties do not agree, however, on the date that the compound interest ends under the statute, *i.e.*, the time the government "receives full compensation for the price adjustment."

According to appellant and its interpretation of the CAS statute, the CAS clause and supporting regulations, the compound interest accrues to the time the United States receives the "price adjustment," which it defines as its payment to the government on 21 September 2004 without interest. According to appellant, the CAS noncompliance interest it failed to pay on 21 September became a "contract debt" subject to the same regulatory provisions as any contract debt owed the government. Thus, at the request of appellant and pursuant to FAR 32.613, DEFERMENT of COLLECTION, the payment of this interest debt was deferred under a standard "Deferred Payment Agreement" (DPA), in consideration for which Raytheon agreed to pay and the government agreed to accept simple (not compound) interest on the debt from the date of demand until paid. (App. br. at 1, 2)[2] This DPA was executed in April 2005 by Wallace Riggins, Army Contract Financing and Robert Cann, Raytheon's Assistant Controller (*id.*, ex. B).

According to the government and its interpretation of the CAS statute, the CAS clause and supporting regulations, the compound interest accrues to the time the United States receives "full compensation" for the price adjustment, *i.e.*, it receives the CAS noncompliance interest for the delayed adjustment (gov't resp. at 2, 3).[3] According to the government, the government has not received full compensation for the price adjustment until it receives the CAS noncompliance interest. Since appellant has failed to pay the CAS noncompliance interest, the interest, compounded daily, accrues on that amount under the statute until that amount is received by the government, and as such, supersedes the simple interest provided for under the DPA (*id.*).

---

[2] Raytheon does not dispute that interest may be properly charged on an "interest debt." Rather, as Raytheon states, the current dispute is whether that interest on the unpaid interest is simple or compound (app. reply at 4).

[3] The parties have stipulated that the CAS noncompliance interest through the date of appellant's payment of the government's share of the pension surplus on 21 September 2004 was $230,953 for Montek (stip. ¶ 3), and was $4,356,515 for RE&C (stip. ¶ 13). It is undisputed that Raytheon has not paid any portion of this interest.

DECISION

The Interest provision of the CAS statute provides for interest to accrue to the time the United States receives "full compensation for the price adjustment." We must assign a reasonable meaning to these terms: "It is a 'cardinal principle of statutory construction' that a 'statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews,* 534 U.S. 19, 31 (2001), *citing Duncan v. Walker,* 533 U.S. 167, 174 (2001); *Golz v. Shinseki,* 590 F.3d 1317, 1321 (Fed. Cir. 2010).

Traditionally, courts have considered that a wronged party's receipt of interest insures "full compensation" for the wrong suffered. The U.S. Supreme Court stated this well settled principle in *Kansas v. Colorado,* 533 U.S. 1, 10-11 (2001) as follows:

> Our cases since 1933 have consistently acknowledged that a monetary award does not fully compensate for an injury unless it includes an interest component. See, e.g., *Milwaukee v. Cement Div., National Gypsum Co.*, 515 U.S. 189, 195, 115 S. Ct. 2091, 132 L. Ed. 2d 148 (1995) ("The essential rationale for awarding prejudgment interest is to ensure that an injured party is fully compensated for its loss")....

The Federal Circuit also cited this principle in *Princess Cruises, Inc. v. United States*, 397 F.3d 1358, 1367 (Fed. Cir. 2005):

> "Prejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress." *West Virginia v. United States*, 479 U.S. 305, 310 n.2, 107 S. Ct. 702, 93 L. Ed. 2d. 639 (1987).

See also Motion Picture Ass'n v. Oman, 969 F.2d 1154, 1157 (D.C. Cir. 1992) ("[I]nterest compensates for the time value of money and thus is often necessary for full compensation").

While these cases deal with prejudgment interest and we deal with statutory interest, the purpose behind both is the same – to recognize the time value of money and to provide full compensation to the party wronged. We must presume, absent evidence to the contrary, that Congress used the term "full compensation" in the Interest provision of the CAS statute in accordance with this well recognized meaning. *See generally* 2B SUTHERLAND STATUTORY CONSTRUCTION § 50:3 (7th ed. 2008) at 176-78:

> The interpretation of well-defined words and phrases in the common law carries over to statutes dealing with the same or similar subject matter.... Common-law meanings are assumed to apply even in statutes dealing with new and different subject matter, to the extent they appear fitting and in the absence of evidence to indicate contrary meaning.

Based upon the above, we believe that the Interest provision of the CAS statute, reasonably interpreted, provides for the accrual of interest—compounded daily in accordance with the decision of the Federal Circuit—to the time that the United States receives "full compensation" for the price adjustment, that is, the receipt of the CAS noncompliance interest owed by the contractor as well as the increased costs.[4] This supports the government's interpretation here.

Raytheon argues that the purpose of the term "full compensation" is to "make[] clear that compound interest accrues until the United States receives the entire or 'full' amount of the contract price adjustment..." (app. reply at 4), which in this case it defines as its payment of the increased costs only in September, 2004. However, appellant's proposed interpretation would be evident from the text of subsection (h)(4) without the term "full compensation." If that key term was omitted, subsection (h)(4) would still read that interest would accrue to the time the United States receives the price adjustment. Raytheon's proposed interpretation fails to give any reasonable additional meaning to the term "full compensation."

Raytheon also argues that the CAS statute clearly distinguishes between the terms "contract price adjustment" and "interest" which renders the government's interpretation of subsection (h)(4) unreasonable (app. reply at 2). We agree that these terms are not synonymous or interchangeable, but we are not persuaded that this fact renders the government's interpretation of subsection (h)(4) unreasonable. We read the CAS statute to require the noncompliant contractor to pay the government its increased costs together with the applicable interest as part of its overall responsibility under the statute. It is this total amount that is referred to under subsection (h)(4) when the statute refers to "full compensation" for the price adjustment.

Appellant also points to the recodification of the CAS statute in support of its position, contending that "the structure of the recodified statute makes it even more clear

---

[4] There was substantial delay in payment for the adjustment here – Montek was sold in 1998 and RE&C was sold in 2000, but Raytheon did not pay the increased costs until 2004.

that the contract price adjustment is separate and distinct from the interest..." (app. brief at 6 n.3). We believe the CAS statute, as arranged and structured prior to January 2011, governs here. In any event, to the extent the new rearrangement and restructure of the statute has any relevance, it does not support appellant's contention. As recodified, Section 1503 is entitled "Contract price adjustment." Section 1503(c) is entitled "Interest" and is expressly made a part of the "Contract price adjustment" provision.

The government's interpretation is also consistent with the CAS clause promulgated by the CAS Board in implementation of the statute, 48 C.F.R. 9903.201-4 (1992), and the CAS clause contained in the contract in issue, FAR 52.230-2 (AUG 1992). Insofar as pertinent, they both provide at (a)(5) that the contractor shall:

> (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. *Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon* computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(Emphasis added) As worded, the CAS clause defines the adjustment as the recovery of the increased costs *together with* interest, and suggests that said adjustment is effected when both amounts are received by the government.

Appellant also cites the parties' DPA, which calls for the payment of simple interest during the deferral period, as an "accord and satisfaction" on the interest question before us. We reject this argument. Insofar as pertinent the DPA provided as follows:

> Furthermore, *this agreement is intended solely as an interim financial arrangement* to defer the Government's right to prompt payment from the Contractor of the alleged indebtedness described below, *pending a decision by the Armed Services Board of Contract Appeals (ASBCA)* (hereinafter called the Board) on the Contractor's appeal, ASBCA number 54907 *and in no way releases or waives any other existing rights or remedies to which the Government is entitled by contract or otherwise*.

(Emphasis added) As stated, the parties intended the DPA to serve solely as an interim financial arrangement pending Board resolution of the relevant issues. Paragraph 2 of the DPA also provided that payment was "subject to any adjustment or modification called for or required by the Board decision." In addition, the government clearly reserved its legal rights under the agreement. Raytheon has not persuaded us that the DPA serves as an "accord and satisfaction" on the interest issue before us.

In a related argument, Raytheon cites the DPA for the proposition that "the government is bound by the contractual acts of its agents within the scope of their authority" (app. br. at 10). While we do not question this general principle, we question its applicability under the particular facts of this case.

We have reviewed all of appellant's remaining arguments but are not persuaded by them. We believe that the government's interpretation of the Interest provision of the CAS statute ascribes a reasonable meaning to the term "full compensation for the price adjustment" that is also consistent with the CAS statute, the supporting regulations and the CAS clause. Appellant's interpretation does not. We believe the government is entitled to interest on the unpaid CAS noncompliance interest, compounded daily, through the date of the government's receipt of that interest.

CONCLUSION

Stipulation on Interest Due

Under the Stipulation dated 5 August 2011, the parties have stipulated to the amount of interest owing for the sale of each business segment for three distinct periods of time in accordance with their respective positions: The period from the date of sale of each segment through the date of appellant's payment on 21 September 2004, identified as "Period 1" (stip. ¶¶ 3, 13); the period from the date of that payment up to 16 December 2004, the date prior to the issuance of the government's demand letter of 17 December 2004, identified as "Period 2" (stip. ¶¶ 4, 14); and the period from the date of the government's demand letter through 5 August 2011, the date the stipulation was filed, identified as "Period 3" (stip. ¶¶ 5, 15). The parties have also stipulated that interest continues to run until the unpaid CAS noncompliance interest is paid in full by Raytheon (stip. ¶ 21).

We have concluded that the government is entitled to interest, compounded daily, on the unpaid CAS noncompliance interest (*see* note 3, *supra*), through the government's receipt of this amount. Accordingly, this compound interest applies to all three periods above. In accordance with the Stipulation, the total interest amount due is $341,922 for

the Montek sale through 5 August 2011 (stip. ¶ 10). With respect to the RE&C sale, the total interest amount due is $6,449,745 through 5 August 2011 (stip. ¶ 20). Interest, compounded daily, shall continue to accrue beyond 5 August 2011 until the CAS noncompliance interest is paid in full by Raytheon (stip. ¶ 21).

The government's motion for summary judgment is granted consistent with this opinion, and the appeal is denied.

Dated: 31 October 2011

JACK DELMAN
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

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

I concur

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. 54907, Appeal of Raytheon Company, rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals