

## Insights

# WARNING FROM THE U.K. COURT AGAINST RUBBER-STAMPING TIMESHEETS

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## SUMMARY

The recent U.K. judgment *Premier Engineering (Lincoln) Ltd v MW High Tech Projects UK Ltd* [2020] EWHC 2484 (TCC) provides some useful practical insights into the court's approach to handling timesheet evidence and examining large amounts of disputed invoices.

## Introduction

It is not uncommon on construction projects for various aspects of the works to be done on a "dayworks" or other "time and cost" payment basis. Further, it is not uncommon for significant parts of monetary claims for delay, disruption, acceleration or damages to be supported by timesheets and invoices from sub-contractors, labour and other suppliers.

The UK Technology and Construction Court (the "**Court**") recently handed down its judgment in *Premier Engineering (Lincoln) Ltd v MW High Tech Projects UK Ltd* [2020] EWHC 2484 (TCC), which provides a useful practical demonstration of how a court might (1) approach timesheet evidence and other relevant evidence for the purposes of calculating and valuing the work done, and (2) assess large numbers of disputed invoices in an efficient manner.

## Claim for unpaid invoices

The "Energy Works Hull Project" involved the design and construction of a large-scale energy-from-waste facility in the UK, which produces steam with refuse derived fuel through a fluidised bed gasification or incineration process.

The Defendant was responsible for the design and manufacture of the project. Initially, the Defendant engaged the Claimant for the supply of support steelwork. The Defendant engaged the Claimant pursuant to a small sub-contract.

The Defendant had a falling-out with another major sub-contractor, and given the satisfactory performance by the Claimant to that date, the Defendant engaged the Claimant to take up some of the work of the hostile major sub-contractor.

Curiously, but by no means unknown in the industry, the procurement for this further work was not done by way of a new sub-contract. Instead, the Claimant was instructed simply to provide manpower at hourly rates and materials, as may be requested from time to time.

A significant dispute erupted between the parties as to the number of working hours incurred by the Claimant's workmen. Relying on the timesheet evidence, the Court awarded the sub-contractor £512,916.73 plus VAT and interest. A very substantial payment.

### **Timesheets as primary evidence**

The Court proceeded on the basis that the signed timesheets should be accepted as the primary evidence for determining the value of the work done.

However, the Court recognised the inherent risks of timesheets prepared by sub-contractors - they are not always entirely correct because of course mistakes may be made. Here, however, the timesheets had been signed off by the paying party. A proper functioning signing off system is the first line of protection against mistakes or any inflated claims, and hence ensures the capacity of the timesheets to provide a solid and reliable foundation for invoicing. The Court accepted that, in this project, the parties' signatures on the timesheets indicated their honest belief as to the value of the work done and therefore the sum due for it.

The Court also stressed that the vouching of the timesheets should be done on a timely basis, to permit contemporaneous assessment by people-in-charge with fresh knowledge of the work.

The Defendant sought to disown its staff's signatures by saying that what had happened was that the "signing" process had been nothing more than a rubber stamping of the timesheets without any meaningful checks. The Court said that the status of the signed-off timesheet as primary evidence should not be downgraded because of the (asserted) cavalier approach to the signing off process by the contractor. The court took the approach that the contractor had made its own bed – by allowing its staff to counter-sign the timesheets – and therefore should lie in it and take the adverse consequences.

The contractor also had tried to disown the signed timesheets by pointing out that the signed papers include a standard statement that any payments were being made "on account and subject to final checks". The court said that caveat only provides protection where "final checks" revealed new facts or matters that cast doubt on the interim valuation.

### **Other evidence to vouch the accuracy of timesheets**

Despite the acceptance of timesheets as the primary source of evidence in this case, the Court also recognised that in some cases timesheets might be far from perfect and acknowledged the possible need to take into account other evidence to verify the accuracy of timesheets, or indeed to establish the claim in the absence of timesheets.

- **Turnstile data** – it is a common practice to have a turnstile gate installed at the entrance of a construction site to record the arrival and exit time of workers. Turnstile evidence may be useful evidence to check against the number of working hours claimed.

In *Premier Engineering*, the Court did not rely on the turnstile data because the parties had agreed during the project not to use turnstile data, due to concerns about the reliability of the recording system in place on that project. If not for this agreement, however, the Court would have regarded the turnstile data as objective data and evidence.

- **Biometric data** – biometric data are generated by a biometric clock to track the signing in and out of the workers. The Court found the parties had agreed during the project to use biometric data to check the timesheets for major inaccuracies. The Court added that modest differences between timesheets and objective biometric data are expected, especially given timesheets typically are rounded to show measurements in hours or half hours.
- **Witness evidence** – The Court acknowledged that in some cases the workers might be called to give evidence about what they were doing (other than at the most general level imaginable). However, it generally is accepted that such “*recollection*” evidence given after the fact is inferior to (and not of the same weight as) objective data recorded contemporaneously.

## Assessing large number of disputed items

Even though the timesheet evidence and biometric evidence were accepted by the Court, as the primary sources of evidence in this Judgment, the Court added that such sources of evidence nonetheless need to be subject to scrutiny and assessment. Given the significant amount of invoices involved, the Court said that examining each and every one of the challenged invoices clearly would be a disproportionate use of the Court’s limited resources. The Court refused to examine all invoices in detail. Instead, the Court adopted the following broad brush approach:

- Step 1: Conduct a general survey of all invoices and sub-invoices.
- Step 2: Look at the overall reduction the Defendant seeks to achieve (in this case, in relation to invoices which it previously scrutinised and paid).
- Step 3: Take one invoice as an exemplar for an invoice that contemporaneously had passed the Defendant’s scrutiny. In this Judgment, the Court took a scrutinised invoice which the Defendant sought to reduce by the largest sum. Then, look in detail at the challenged sub-invoices with value over £150.

- Step 4: In respect of the invoices which had not been approved contemporaneously, to review one such invoice. In this Judgment, the Court picked the largest invoice submitted.
- Step 5: Look for specific examples where the foregoing exercise does not reveal sufficient information to support even a broad-brush approach to the Defendant's objections.
- Step 6: Reach an overall assessment of the extent to which, if at all, a reduction should be made to the invoices.

## Lessons learnt

The Judgment did not shift the burden of proof that the claimant bears: in a claim for unpaid invoices the claiming party still bears the burden of proving its claim, of course. However, it does remind us of the cardinal importance of the evidential value of timesheet and other evidence. Going forward, here are a few points for contractors and sub-contractors to bear in mind to ensure that all hours are recorded accurately on the timesheets for invoicing purposes:

- **Do not rubber stamp timesheets and invoices when submitted for approval.** Sign off timesheets and invoices only after verification. Signature on timesheets and invoices probably will be seen by a court/arbitrator as an agreement with the recorded amount.
- **Require timesheets and invoices to be submitted and reviewed on a timely and regular basis.** Handling a large backlog of timesheets and invoices will result in a significant chances of errors, especially if this is not done in a timely way. The reality of life is that those involved quickly lose fresh memory on the scope and extent of work done.
- **Raise immediately if you have doubts or concerns about the records submitted.** A timely complaint is likely to have more credibility than one raised after the fact.

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## MEET THE TEAM



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