

The Dispute Resolution Board Foundation Istanbul 2010

Scenario Nr. 1 (Clause 20 of the FIDIC Conditions)

A FIDIC contract (Red book 1999) has been signed for the execution of a dam between the Employer and the Contractor. In this contract both parties have agreed on a three-member DAB. Ten months after the beginning of the contract, the DAB has not yet been nominated. Moreover the provisions of the contract do not specify who the appointing authority is. At present, the works are in progress but the Contractor states that the last instruction issued by the Engineer includes a variation. In his eyes, this variation delays the contractual programme and leads to additional costs. After discussion with the Engineer, both parties are not able to reach an agreement on this issue. Consequently the Contractor submits a claim within the contractual deadline. After analysis, the Engineer rejects the claim on the grounds that the requested EOT is not justified and that the costs are already included in the contract amount.

Question Nr. 1

Later both parties have agreed on the necessity of the appointment of the DAB. As representative of a party you are in charge of proposing/selecting the appropriate member.

- What do you suggest if you cannot find an agreement with the other party regarding the appointment of the chairman?
- What kind of solutions would you propose if finally both parties do not find an agreement on the appointment of the DAB?

Question Nr. 2

Now the DAB has been appointed and you are one of the members. The DAB has just received a referral from the Contractor regarding the above claim.

- What procedure would you suggest to the Parties, and how would you organize the required sequences?
- Having received the referral and the answer, how would you deal with the request of one party regarding a rebuttal paper?
- If requested by one party, do you accept the hearing of one party without the presence of the other party?
- At the hearings and without preliminary request one party comes with an expert and a lawyer; the other party refuses to attend the meeting; what is your reaction/proposal?
- Do you accept the submission of an essential document after the agreed deadline?

Question Nr. 3

The DAB has finally issued its decision. Within the agreed deadline, and for distinct reasons, each party has issued a notice of dissatisfaction. Two months after the notification of the DAB decision, the DAB states that one party refuses to give effect to the DAB decision.

- As representative of the other party, what is your reaction and what kind of procedures would you decide?
- In case you decide to go to arbitration, would you refer the whole case to the tribunal or would you refer only the failure of the other party to give effect to the DAB decision? Explain your choice.
- According to your experience, is there any chance to get an interim award regarding the enforcement of the DAB decision? Justify your position.

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