

Qorti ta' l-Appell
(Kompetenza Inferjuri)

Imhallef Anthony Ellul

Appell Civili numru:- 8/14 AE

Bonnici Bros Limited (appellanti)

vs

Wasteserv Malta Limited (appellata)

30 ta' Jannar 2017

Il-kontendenti għamlu kuntratt datat 21 ta' Ġunju 2010 li permezz tiegħu is-soċjeta` rikorrenti tqabbdet tagħmel xogħol ta' *handling and compaction of permitted waste at the Għallies* bir-rata ta' €2.67 kull tunellata.

Tilwima li nqalgħet bejn il-partijiet dwar jekk skont il-kuntratt kellux isir ħlas skont *Schedule of Rates* (Envelope Number 3) għat-tifrix ta' materjal inerti (skont klawżola 2.1 *tat-Technical Specifications of the Contract* – p. 129) jew jekk dan ix-xogħol kienx inkluz fir-rata ta' €2.67 għal kull tunellata. Fil-*Joint Notice of Arbitration*, it-tilwima giet spjegata b'dan il-mod:

"NATURE OF CLAIM: Claimant maintains that any dispersal of inert material (as per Clause 2.1 of the Technical Specifications of the Contract (p.129) performed under the contract of works de quo is to be invoiced to Respondent in accordance with the rate per tonne quoted by Claimant in the Schedule of Rates (Envelope No. 3).

Respondent disagrees with such an interpretation and maintains that the dispersal of inert material may not be separately invoiced by Claimant".

B'lodo tas-17 ta' Frar 2014, l-Arbitru ddecieda li l-ħlas għat-tifrix ta' materjal inerti kien inkluz fir-rata ta' €2.67 għal kull tunellata¹.

Is-soċjeta` rikorrenti appellat mis-sentenza, bl-aggravju li l-Arbitru interpretat il-kuntratt ħażin, filwaqt li s-soċjeta` intimata iddefendiet id-deċizjoni tal-Arbitru.

Konsiderazzjoni.

¹ *"Għal dawn ir-raġunijiet, l-Arbitru taqta' tiddeciedi illi r-rata applikabbli skont il-kuntratt intitolat Handling and Compaction of Permitted Waste delivered at the Thallis, senjatament ir-rata ta' €2.67 għal kull tunellata, tinkludi wkoll il-prezz ta' dispersal of inert material u għaldaqstant tqis illi l-pretensjoni tas-soċjeta rikorrenti Bonnici Bros. Limited m'għandix tigi milqugħa".*

Skont il-klawżola 2.1 (Volume 3, *Technical Specifications*, pagna 129), xogħol il-kuntrattur kien li fil-faċilita` tal-Għallies:

"(a) Handling of permitted waste delivered to the facility, dispersing the waste in shallow layers of up to 1m to 2m height;

(b) Compaction of the permitted Waste so dispersed through repeated passes;

(c) Loading and transport of cover material that is crushed inert material (franka);

(d) Dispersal of inert material or other degradable material such as a geo-textile membrane on the permitted waste to provide a daily cover having a thickness of about 100mm to 150mm;

(e) Dispersal of inert material to level and provide suitable access paths for vehicles delivering permitted waste at the facility".

Għal dak li jirrigwarda l-prezz, fil-kuntratt jingħad li għal:

"Handling and Compacting of Permitted Wastes at the Ghallis Engineered Landfill, and related activities as detailed in the attached specifications and conditions"²,

għal kull tunellata, titħallas rata ta' €2.67.

Klawżola numru 48 (pagna 125) tal-Volum Numru 2 intitolat *Special Conditions* tipprovdi:

"Article 48: Interim payments.

*48.1 Payments will be made to the contractor upon presentation of a bill **which shall be based on the quantities of Permitted Wastes handled and compacted by the Contractor during the preceding month calculated on the rate offered and accepted per tonne.** In this respect the bill will be calculated according to the **weighing of the Permitted Wastes directed to the operational area for handling and compactions according to the conditions of this contract. The Permitted Wastes shall be weighed and recorded at the weighbridges situated at the entrance of the Maghtab Environmental Complex.** The Contractor shall be provided with all the necessary records and data in order to enable the production of the required monthly invoice "* (enfazi miżjuda mill-qorti).

Għalkemm il-kuntrattur hu marbut mhux biss li jirċievi u jifrex l-iskart, imma li jagħmel ix-xogħol l-ieħor indikat fil-klawżola 2.1 fuq imsemmija, il-ħlas hu bbażat esklussivament fuq il-*permitted waste* u mhux ukoll fuq ix-xogħol l-ieħor li huwa marbut li jagħmel skont il-kuntratt, b'mod partikolari l-garr u tifrix tal-*inert material*. Din il-klawżola hi ċara u ma tħalli lok għall-ebda ambigwita`. Għalkemm tirreferi għall-interim payments, pero li kieku x-xogħol

² Ara dik il-parti ntestata *Bill of Quantities*, Volume 4 (pagna 136).

ta' tifrux ta' *inert material* kellu jithallas ukoll, dan kien jissemma wkoll f'dik il-klawzola. Dan meta tqies li dan ix-xogħol kien qiegħed isir kuljum Għalhekk m'hemmx bżonn ta' interpretazzjoni; *in claris non fit interpretation*. Din il-klawzola waħedha hi biżżejjed biex teskludi t-tezi tal-appellanti. Hi fiha nnifisha prova li l-prezz li kellu jithallas lill-kuntrattur għax-xogħol jagħmel skont il-kuntratt, hu bażat fuq il-piż tal-*permitted waste*. Li kieku l-intenzjoni kienet li għat-tifrux tal-*inert waste* l-kuntrattur jithallas apparti u bl-istess rata, f'din il-klawzola ma kienx jissemma biss il-*permitted waste*. *Interim payments* isiru bħala fhas akkont tax-xogħol kollu li jkun qed isir u mhux parti minnu.

L-arbitru għamlet ukoll riferenza għal:-

- (i) Klawzola numru 18 ta' Volume 2 (pagna 122) tipprovdi li:

".... the quoted rate shall be inclusive of **all work as specified** as well as any other works which are of a contingent or indispensable nature for completing the work in its entirety"; u

- (ii) Klawzola 18.2 u 18.3 fis-sezzjoni intitolata *Obligations of the Contractor* tgħid li:

"....the rates and prices stated in the bill of quantities or price schedule ... shall, save where otherwise provided in the Special Conditions, cover all his obligations under the contract".

"18.3 Since the Contractor is deemed to have determined his prices on the basis of his own calculations, operations and estimates, he shall, at no additional charge, carry out any work that is the subject of any item whatsoever in his tender for which he indicates neither a unit price nor a lump sum".

Mit-*tender document* li pprezentat l-appellanti ma jistax jingħad li ddikjarat li għal xogħol ta' '*dispersal of inert material*', kienet qegħda tippretendi l-prezz li kkwotat. L-appellanti kkwotat prezz wieħed għall-proċess kollu. Kieku riedet kellu kull opportunità li meta għamlet l-offerta, tikkwota prezz separat għal kull biċċa xogħol li kellha ssir skont it-tender. Hejja li m'għamlitx. Issa ma tistax tilmenta mill-aġir tagħha stess.

Peress li l-kuntratt hu ċar, mhix applikabbli l-ġurisprudenza ċitata mill-appellanti dwar l-interpretazzjoni tal-kuntratti. Lanqas ma tapplika l-ġurisprudenza li l-appellanti għamlet bażata fuq il-prinċipju li *omina labor optat premium*. Ir-relazzjoni bejn il-kontendenti hi regolata minn kuntratt, u d-deċiżjoni trid tkun bażata fuq dak li jipprovdi l-kuntratt. Dan mhuwiex każ fejn il-kwistjoni kienet dwar xogħol addizzjonali, kif kienet il-kawża li l-appellant semmiet f'paragrafu 3.20 tar-rikors tal-appell.

L-appellant semmiet ukoll il-fatt li l-inert material kien jintiżen u t-tagħrif kien jingħata lill-kuntrattur. Pero' tali fatt ma jistax iservi biex jegħleb dak li hu ċar fil-kuntratt. Hu l-kuntratt stess fi klawżola 3.2.6 (Volume 3 Technical Specifications, paġna 131) li jipprovdi: "*The inert cover material shall be weighed in transit to the tipping area*". Ma ssemmiet l-ebda klawżola tal-kuntratt li tista' twassal għal konklużjoni li l-piż jittiehed biex jiġi determinat il-ħlas li għandu jsir lill-kuntrattur għal *dispersal ta' inert material*.

Għal dawn il-motivi tiċhad l-appell bl-ispejjeż kontra l-appellanti.

Anthony Ellul