

Timesheets, Turnstile Records, Biometric Data and (potential) Agreements made in Stairways...

by Jon Miller

Introduction

1. A recent case in the Technology and Construction Court has dealt with the common situation where timesheets, turnstiles and biometric data all tell a different story - how is the labour on site to be measured and valued?
2. In *Premier Engineering (Lincoln) Limited ("Premier") v MW High Tech Projects UK Limited ("MW")*,¹ Premier were engaged by MW to provide labour (including management and supervision), plant and materials for a project in Hull ("the Project"). MW would decide on a weekly basis how much labour was required and Premier would then supply the operatives and charge an hourly rate. Premier's position was that they were underpaid £1.3m, whilst in contrast MW believed that they had substantially overpaid.

Countersigned timesheets

3. Premier relied in part on timesheets setting out how much time their operatives had spent working, which were then countersigned by MW. However, the timesheets did not always correlate with the turnstile records showing when the operatives had entered and left the site.
4. The labour, plant and materials Premier were supplying were important to the success of the Project. MW explained that many of Premier's timesheets were signed off in order to "keep the peace", and sums were paid on account to assist Premier's cash flow, but it was always the intention to claw back any overpayment at a later date.
5. The Court, however, rejected any notion of MW simply "rubber stamping" Premier's timesheets. Although a countersigned timesheet was not by any means conclusive, it was primary evidence that the hours on the timesheet were accurate. The Court also held that Premier had not agreed to any potential refund of any payments at a later date.

Turnstile or not to turnstile?

6. Turnstiles may have recorded operatives entering and leaving the site but Premier made it clear they distrusted the turnstile records partly because the turnstiles (in

1. [2020] EWHC 2484.

their view) were unreliable, and because some work had to be done outside of the area where the turnstile would register an operative entering or leaving (e.g. safety briefings). For this reason, and with MW's knowledge, Premier installed a biometric clock to record their operatives' hours.

7. There was also evidence that MW were aware that the turnstile records did not support the hours on Premier's timesheets, but MW decided to pay Premier often but not always on the basis of the timesheets in order to keep them on site and working. Indeed, some Payment Notices were marked "on account and subject to final checks".

The Court, however, rejected any notion that Premier accepted that they would be paid on account, but with payments subsequently reviewed on the basis of the turnstile records. Indeed, the Judge found that, following the agreement to install the biometric reader, Premier and MW had agreed not to use the turnstile records at all – the Court found the turnstile records were inadmissible as a result.

Attempts to regularise the position in writing

8. During the course of the Works, MW produced a revised agreement stating that turnstile data could indeed be used, and pleaded that a binding agreement had been entered into to this effect. Premier pointed out that an email sent just over two weeks later accepted the proposal in principle but specifically did not accept that turnstile data would be used to value payments for labour.

The Court found that no such agreement had been reached to use the turnstile records – indeed, the Court noted that for a while MW stopped supplying the turnstile records to Premier.

9. There was also a disagreement between MW and Premier as to a meeting which took place in a stairwell which both parties had a different interpretation of. There were also differences as to how minutes of this meeting were produced and distributed which evidenced an alleged agreement not to use turnstile data.
10. The Court found no agreement was ever reached in the stairwell, but to some extent it did not matter – the Parties had already agreed not to use turnstile records.

Lack of productivity/taking too long in the Canteen

11. The Court accepted that whilst timesheets and biometric records may be used, the Court would also look at other information such as witness statements and contemporaneous documents (for example, emails). There were allegations that some of the labour were not productive, were leaving site early, were spending too long in the canteen etc., which inflated the hours on the timesheets. However, here the Court found there was no substantial evidence backing up these claims for key periods where MW were complaining about the operatives being unproductive etc.

Reasonable Skill and Care

12. The Court accepted that it was an implied term of the Contract between the Parties that Premier was obliged to exercise reasonable skill and care when managing and supervising labour. It was alleged that Premier had breached this term in failing to ensure their labour was working productively. However, the Court found that this particular allegation "goes nowhere" as there was no specific evidence of a breach of the term to use reasonable skill and care causing loss and damage – no alleged instances of a lack of productivity etc could be attributed to specific failings in supervision and management.

Conclusions

13. Overall, the Court found that there was an agreement between the Parties whereby timesheets and biometric data would be used to calculate labour payments, and the turnstile records would be ignored (indeed they were not even admitted as evidence).
14. The judgment in this case is extremely detailed and many of the conclusions are specific to the facts of this case. Speaking as someone who was involved in a matter years ago where "D. Duck" and "M. Mouse" were apparently highly qualified welders who did a lot of overtime, there are, however, still some important lessons to be learned:
 - 14.1 prima facie, a countersigned signed timesheet is the starting point for recovering labour costs but it is by no means conclusive. The Court can look at other evidence such as witness statements and timesheets;
 - 14.2 the parties to a contract are free to agree how they wish to measure and value labour. Here it was found there was an agreement not to use turnstile records;
 - 14.3 it always helps to have any agreement set out clearly in writing, but with this case attempts to regulate the issue during the course of the Works failed to reach an agreement;
 - 14.4 complaints about lack of productivity etc. may be difficult to establish but need to be supported by something in writing, ideally on or about the time the alleged incidents were supposed to have happened.
15. The case demonstrates, as always, the need for clarity when entering into agreements of any sort, particularly those for valuing the Works and even more so labour. Business and commercial dealings may require a degree of subtlety, but this should not be sacrificed at the cost of transparency.