



## LEGAL BRIEFING

### *Cantillon Limited v Urvasco Limited*

Mr Justice Akenhead [2008] TCC EWHC 282

#### ***The Facts***

This was a claim to enforce an adjudication decision. The decision allowed Cantillon Limited (“Cantillon”) £391,565.50 plus VAT and one fifth of this decision related to Cantillon’s claim for 13 weeks extension of time.

Cantillon had submitted two extension of time claims to adjudication, one for 16 weeks and one for 13 weeks. Urvasco Limited (“Urvasco”) argued that the adjudicator did not have jurisdiction and failed to follow the rules of natural justice with respect to the prolongation costs relating to the 13 week extension of time claim. Urvasco argued that as Cantillon expressly claimed for a particular 13 week period and for the specific preliminary costs alleged to have been incurred during that period, then the adjudicator could not jurisdictionally and should not have allowed costs for a different and later period, at least without giving Urvasco the opportunity to adduce evidence and argument that the costs during the later period were significantly less than the earlier period. Urvasco argued that this part of the decision was not severable from the other parts of the adjudicator’s decision that had not breached the rules of natural justice.

#### ***The Issues***

There were two issues for the Judge to consider:

1. Whether the adjudicator had breached the rules of natural justice;
2. If so, whether that part of the adjudicator’s decision that was alleged to offend the rules of natural justice could be severed from the remainder of the decision.

#### ***The Decision***

The Judge was of the opinion that the adjudicator’s decision did not breach the rules of natural justice. Although it was therefore not necessary to consider whether aspects of the adjudicator’s decision could be severed, the Judge did so. The Judge listed the following relevant propositions:

1. The first step must be to ascertain what dispute or disputes has or have been referred to adjudication. One needs to see whether in fact or in effect there is in substance only one dispute or two and what any such dispute comprises.
2. It is open to a party to an adjudication agreement as here to seek to refer more than one dispute or difference to an adjudicator. If there is no objection to that by the other party or if the contract permits it, the adjudicator will have to resolve all referred disputes and differences. If there is an objection, the adjudicator can only proceed to resolve more than one dispute or difference if the contract permits him to do so.
3. If the decision properly addresses more than one dispute or difference, a successful jurisdictional challenge on that part of the decision which deals

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with one such dispute or difference will not undermine the validity and enforceability of that part of the decision which deals with the other(s).

4. The same in logic must apply to the case where there is non-compliance with the rules of natural justice which only affects the disposal of one dispute or difference.
5. There is a proviso to 3 and 4 above which is that, if the decision as drafted is simply not severable in practice, for instance on the wording, or if the breach of the rules of natural justice is so severe or all pervading that the remainder of the decision is tainted, the decision will not be enforced.
6. In all cases where there is a decision on one dispute or difference, and the adjudicator acts, materially, in excess of jurisdiction or in breach of the rules of natural justice, the decision will not be enforced by the Court.

***Comment***

This issue of severance of part(s) of an adjudicator's decision that may have breached the rules of natural justice has been the subject of only a handful of decisions. This decision has clarified this area and given guidance as to the relevant principles that will be applied. However, for those acting as adjudicator, the goal must be to produce an enforceable decision that does not breach the rules of natural justice.

***Charlene Linneman***  
***April 2008***

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