UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: December 5, 2023

CBCA 7761

REAL LION LOGISTICS SERVICES COMPANY,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Ahmad Farzad, President of Real Lion Logistics Services Company, Kabul, Afghanistan, appearing for Appellant.

Matthew S. Tilghman, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Washington, DC, counsel for Respondent.

Before Board Judges **GOODMAN**, **ZISCHKAU**, and **CHADWICK**.

CHADWICK, Board Judge.

Appellant, Real Lion Logistics Services Company, attempted in August 2021 to arrange a belated delivery of construction supplies under a purchase order issued by the United States Embassy in Kabul, Afghanistan. Respondent, Department of State, was in the process of evacuating the embassy and withdrawing from the country. No delivery occurred. Appellant alleges that the incoming Taliban Government seized the supplies.

Appellant seeks to recover its expenses. Appellant, which is unrepresented by counsel, has not plainly specified a legal theory. Respondent seeks summary judgment. Appellant filed an unresponsive position statement, two months late. We grant the motion and deny the appeal.

Background

We draw the following facts from appellant's claim, which the Board designated as the complaint, and images shown therein, as cited in respondent's statement of undisputed material facts. *See* Board Rule 8(f)(1) (48 CFR 6101.8(f)(1) (2022)).[1]

No later than August 10, 2021 (respondent thinks it actually happened on August 6), the Kabul embassy emailed appellant a unilateral purchase order for construction supplies. The purchase order stated that the "F.O.B. [free on board] POINT" was "Destination." The order also included the Contract Terms and Conditions—Commercial Items (OCT 2018) clause, which stated that the contractor bore the "risk of loss" until "[d]elivery of the supplies . . . if transportation is f.o.b. destination." 48 CFR 52.212-4(j)(2) (2020).

The order stated that delivery was due no later than August 11. At 11:40 p.m. on August 11, appellant notified the embassy by email that it could deliver the supplies on August 12. Appellant did not hear back from the agency until February 13, 2022, when respondent issued a unilateral modification rescinding the purchase order. Meanwhile, the Taliban captured Kabul.

In November 2022, appellant submitted a claim for $64,647 as compensation for "Purchased and Lost Material." Appellant alleged in the claim that on August 15, 2021, "Taliban took over the Kabul City (Capital of Afghanistan). While we lost our House at Panjshir, and warehouse at Kabul Provinces. The losses were all a combination of Taliban Robberies from our Warehouses. . . . [T]hey (Taliban) took all our material and st[ole] them from our Company's Stock." The theory of contractual entitlement appeared to be that appellant "did all proper communication as well as sent several notice[] emails to the Embassy." Respondent denied the claim in February 2023.

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[1] Respondent expresses doubt about the authenticity of some of the documents pictured in the claim but accepts them at face value for purposes of the motion. *See* Rule 8(f)(1) (movant may cite "admissions in pleadings"). Appellant filed no Rule 8(f)(2) statement of genuine issues and does not dispute the facts it previously alleged. As a result, respondent's motion resembles a motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure. *See* 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1367 (3d ed. 2004). As the Board has no rule that corresponds to Rule 12(c), we address the motion as respondent has styled it.

Proceedings Before the Board

Appellant filed a timely notice of appeal, attaching the claim, which the Board designated as the complaint under Rule 6(a). Respondent moved for summary judgment in July 2023 in lieu of filing an answer. Because respondent's motion was filed two weeks after the deadline the Board had set in an initial order, but was properly supported and appeared potentially meritorious, the Board accepted the motion but, as a penalty for the lateness, gave appellant an extra thirty days, until September 11, 2023, to respond under Rule 8(f)(2).

On September 13, 2023, having received nothing from appellant, the Board ordered appellant to state whether it wished to proceed with the appeal. Appellant did not do so. "Instead," as the Board wrote in an order issued on October 16, 2023, appellant "repeatedly emailed the presiding judge's chambers seeking advice or instructions."[2] The Board added, "There may be a language barrier. If so, we cannot do anything about that. The Board conducts proceedings in English." The Board warned appellant that this appeal was "an active legal case under United States law" and that a response to the pending motion was "due immediately." (Capitalization and boldface omitted.)

Fourteen days later, appellant asked in an email to the presiding judge's chambers to extend the deadline for its response to November 10, 2023, stating that it had recently decided to retain "a defense lawyer." The Board treated this email as a procedural motion and denied it because appellant had not "state[d] the other party's position" per Rule 8(c), but we continued to hold a decision in abeyance.

On November 9, 2023, appellant filed a two-page, single-spaced "statement." Most of the statement summarizes the claim and indicates that appellant has rejected a settlement offer. The statement concludes:

> In your previous correspondence, you appropriately referred to the government motion [for] summary judgment, particularly the "Prayer for Relief," which suggests that our claims for payment under this purchase order should be denied. We believe this viewpoint is unjust and inappropriate, considering our unwavering commitment to fulfilling our contractual obligations.

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[2] Appellant's emails were cordial, clear, and urgent. They had nothing to do with advancing the case. On September 23, for example, appellant wrote to chambers, with the salutation "Dear Sir/Madam" and a courtesy copy to respondent's counsel, stating that a company officer had been "arrested by the Taliban" and closing with a "brotherly request to you and your team to kindly assist us in this matter."

> We sincerely hope that you and your team can reconsider your decision regarding our payment for this purchase order, taking into account the genuine and substantial financial losses we have incurred. Your support and understanding in this matter would be of immense assistance to us.
>
> We appreciate your attention to this matter and remain open to providing any additional information or clarification if needed.

Respondent filed no reply by the deadline.

Discussion

Respondent must show "it is entitled to judgment as a matter of law based on undisputed material facts." Rule 8(f). Because no material facts are in dispute, the case presents only legal issues. *See Ben Holtz Consulting, Inc. v. Department of Agriculture*, CBCA 7637, slip op. at 5 (Nov. 17, 2023); *see also M.A. Mortenson Co. v. Brownlee*, 363 F.3d 1203, 1205 (Fed. Cir. 2004) ("Contract interpretation is a question of law . . . .").

We agree with respondent that the unilateral purchase order was an offer to contract that expired by its terms when appellant did not proffer delivery by the specified date, August 11. *See Smart Business Machines v. United States*, 72 Fed. Cl. 706, 709 (2006); *Rex Systems, Inc*., ASBCA 45301, 93-3 BCA ¶ 26,065, at 129,564–66. Even if we assume that the order remained open after August 11, respondent had no duty to reschedule immediately, and the designation of f.o.b. destination plainly meant that appellant bore the risk of loss of the items until delivery. *See* 48 CFR 47.303-6(b)(4); *Zafer Taahhut Insaat ve Ticaret, A.S. v. United States*, 120 Fed. Cl. 604, 609 (2015), *aff'd*, 833 F.3d 1356 (Fed. Cir. 2016); *Free on Board*, Black's Law Dictionary (11th ed. 2019). Respondent did not breach or change the purchase order and does not owe appellant anything as a result.

We recognize that appellant may not have fully understood how to proceed before the Board. We find that this resulted in no significant prejudice to appellant, as we base our decision on the facts presented in the claim.

Decision

We **DENY** the appeal.

Kyle Chadwick
KYLE CHADWICK
Board Judge

We concur:

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge