



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: November 15, 2012

CBCA 2802

KK&L ADMINISTRATION INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Kevin E. Clyde, President of Grand Rental Center, Inc., Panaca, NV, appearing for Appellant.

G. Kevin Jones, Office of the Solicitor, Department of the Interior, Salt Lake City, UT, counsel for Respondent.

Before Board Judges **SOMERS**, **HYATT**, and **KULLBERG**.

**SOMERS**, Board Judge.

The Department of the Interior, Bureau of Reclamation (BOR or the Government) awarded to KK&L Administration Inc. (KK&L) a contract for the rental of equipment for use at a jobsite located at Cedar View Reservoir, approximately nineteen miles northwest of Neola, Utah. The same equipment was already on site as a result of a previous contract between Grand Rental Center, Inc. and the Government. KK&L hired Grand Rental Center as its subcontractor. The equipment included what is referred to as a 725 Rock Truck.

The Government used the equipment until October 28, 2010. On that date, the Government returned the equipment to the place at which it had been originally delivered to the Government. The Government notified KK&L that the equipment was ready to be taken

off the job site. Several government employees inspected the rock truck at the time that the contract was completed, and also when it was ready to be picked up. No one apparently observed any damage to the tires of the rock truck. One tire, however, did appear to be low, and a government employee put air into that tire.

KK&L did not remove the equipment until November 11, 2010, two weeks after receiving notification that the equipment could be removed. Upon removal, KK&L took the truck to Wheeler Machinery Company in Vernal, Utah, where the tire was dismounted and replaced at a cost of \$4311.87.

Two months after KK&L picked up the truck, it notified the Government that the truck had been returned with a "tire flat, the result of a rock cut in the sidewall." KK&L asked the Government for compensation in the amount of \$4311.87.

The Government rejected KK&L's request for payment. However, the Government offered to pay KK&L a portion of the amount claimed:

After speaking with our employees we found that the tire didn't have a torn out sidewall and was inflated when we left the equipment for pickup; however, the equipment was not picked up for several weeks after it was called off rent. In the case that a slow leak completely deflated the tire before it was picked up and the weight of the machine on the rim cut through the tire, we are offering \$641 which is what it would have cost to fix a slow leak at the jobsite.

James Bleak of KK&L rejected this offer in an e-mail message to a BOR contract specialist, dated November 16, 2011, stating that "we are not in agreement with your decision and request an arbitration hearing. I would also like to assign all collection rights to this bill to Grand Rental and would like you to forward me the applicable paperwork to do so." The Government did not send KK&L any paperwork. Instead, the BOR contracting officer treated this action as a request for a contracting officer's final decision and denied KK&L's claim on January 4, 2012.

Meanwhile, Kevin E. Clyde, the president of Grand Rental Center, sent a series of e-mail messages and letters directly to the agency, seeking compensation for the damage to the truck. The agency did not respond to him because "he is the subcontractor." On March 29, 2012, Mr. Clyde, purporting to be KK&L's authorized representative, appealed the contracting officer's final decision to the Board.

In conjunction with the filing of its answer, the Government has moved to dismiss this appeal, asserting that the KK&L representative who filed the appeal is actually the president

of the subcontractor and a subcontractor may not directly sue the Government under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (Supp. IV 2011). Alternatively, the Government argues that the contractor has “not met the burden of proof to recover.”

Based upon a review of the record, there is no evidence that an authorized representative of the prime contractor signed the notice of appeal as required by the Board’s rules. Therefore, we dismiss the appeal for lack of jurisdiction.

#### Discussion

The Contract Disputes Act permits a “contractor” to appeal a contracting officer’s decision to the appropriate board of contract appeals. 41 U.S.C. §§ 7101, 7103(a). “The term ‘contractor’ means a party to a Federal Government contract other than the Federal Government.” *Id.* § 7101(7). Here, the contractor involved in this contract is KK&L. Grand Rental Center is the subcontractor.

Appellant seeks to establish standing to maintain the appeal by submitting a document in opposition to the motion to dismiss. The document is an e-mail message, written in letter format and dated January 2, 2012, that claims to appoint Mr. Clyde to represent KK&L in this matter. The document states:

January 2, 2012

Dear Mr. Kevin Clyde,

I write this letter appointing you to represent KK&L Administration, Inc., in the CBCA 2802 Appeal. You have been involved in this project since day one and have represented us since we started the Contract. Your knowledge of the job, equipment, and times has made this project go well, and with this knowledge will help the case regarding the report of the tire.

Sincerely,  
James Bleak  
KK&L  
Operation Manager

Because this is an e-mail message, it is not signed.

In its reply, the Government argues that this e-mail message does not satisfy the provision of the Contract Disputes Act, 41 U.S.C. § 7102, that limits contract claims against

the Government to prime contractors. It notes first that the document is not signed or notarized. In addition, the document references a docket number (CBCA 2802) that had not yet been assigned at the time the message was purportedly written. Although the e-mail message is dated January 2, 2012, the appeal was not docketed until April 3, 2012. Finally, the Government provides evidence that the “properties” of this document indicate that it was created on September 10, 2012, and was last saved not by the contractor, KK&L, but by the subcontractor, Grand Rental Center.<sup>1</sup>

We agree that the document submitted by appellant is of questionable validity. However, even if we assume for the sake of argument that appellant had authorized Mr. Clyde to represent KK&L in this matter, the notice of appeal is still defective.

The Board’s Rules of Procedure specify who may submit an appeal before the Board. A notice of appeal must be in writing and “shall be signed by the appellant or by the appellant’s attorney or authorized representative.” Rule 2(a)(1)(i) (48 CFR 6101.2(a)(1)(i) (2011)). The Rules also provide that an appellant that is “a corporation, trust, or association may appear [before the Board] by one of its officers.” Rule 5(a)(1). Taken together, a clear principle emerges: if the appellant is a corporation, one of its officers may be designated an “authorized representative” permitted to file appeals with the Board.

Thus, only an “authorized representative” of the corporate entity KK&L, meaning a corporate officer or an attorney representing KK&L, is permitted to sign the notice of appeal under the Board’s rules. KK&L has presented no evidence to show that Mr. Clyde had been appointed to be an officer of KK&L. KK&L may not designate a non-corporate officer who is not an attorney to represent it before us on this matter.

### Decision

In light of the defective notice of appeal, we do not possess jurisdiction to entertain this appeal. Accordingly, the appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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JERI KAYLENE SOMERS  
Board Judge

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<sup>1</sup> The timing of the submission of this e-mail message, in response to the Government’s motion to dismiss, raises additional questions of credibility.

We concur:

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CATHERINE B. HYATT  
Board Judge

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HAROLD C. KULLBERG  
Board Judge