The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Datalink, a Stan Clothier Company, Inc.--Assignment of Claims

File: B-225051

Date: February 19, 1988

DIGEST

Ruling by the Equal Employment Opportunity Commission (EEOC) denying assignee's claim arising under an assignment of a purchase order contract between the EEOC and the assignor is affirmed. The EEOC was not bound by the assignment because the assignment did not comply with the requirements of the Assignment of Claims Act and was never recognized or agreed to by the EEOC.

DECISION

The Equal Employment Opportunity Commission (EEOC) requests our decision on an appeal by Datalink, a Stan Clothier Company, Inc., of the EEOC's denial of Datalink's claim for $14,657.56, arising under a purported assignment of a purchase order contract between the EEOC and Information Research Association, Inc. (IRA). This matter first came to our attention in a letter we received from Senator Rudy Boschwitz requesting our Office to investigate the circumstances surrounding the disallowance of Datalink's claim. When we contacted the EEOC to ask for a report on the matter, we were advised that Datalink's legal representative had "appealed" the EEOC's ruling and had requested a decision from our Office. We affirm the EEOC's denial of Datalink's claim because the assignment did not satisfy the requirements set forth in the Assignment of Claims Act, and there is no evidence to indicate that any official at the EEOC ever recognized or consented to the assignment.

BACKGROUND

On February 19, 1986, the EEOC issued a purchase order to IRA for computer equipment, totaling $22,550.00. On February 24, 1986, the President of IRA, Michael S. Grigoni, apparently assigned the purchase order to Datalink--the

company that had supplied IRA with the computer equipment that IRA delivered to the EEOC.1/

By letter of February 24, 1986, to the EEOC's Finance Branch, Mr. Grigoni advised the EEOC that IRA had assigned payment on the account to Datalink. Enclosed with this letter was IRA's invoice which stated on its face that payment thereon should be made to Datalink. Apparently, the EEOC's Finance Branch received this letter and the attached invoice on or about March 14, 1986. The EEOC has advised us that it did not receive copies of the actual assignment agreement, however, until August 5, 1986.

The invoice from IRA, which states that payment thereon should be made to Datalink, has a handwritten notation by the EEOC indicating that the original vendor had requested an assignment and that payment thereon would be withheld until documentation was received. Lower on the invoice is another handwritten notation stating that payment should be made to the original vendor--IRA.2/ Subsequently, on or about April 23, 1986, a check was disbursed to IRA as payment for the computer equipment that the EEOC purchased.

Initially, by letter dated July 18, 1986, the EEOC advised Datalink that it would not pay Datalink's claim for $14,657.563/ because payment "has already been properly made" to IRA. Subsequently, after investigating the matter further, the EEOC determined that it had been notified of the "purported" assignment before making payment to IRA.

1/ Evidence of the assignment includes a copy of the purchase order, with a handwritten notation from Mr. Grigoni, dated February 24, 1986, stating that the purchase order had been assigned to Datalink, and a copy of the assignment agreement between IRA and Datalink, which also contains non-completion and non-disclosure clauses. In addition to these documents, the EEOC furnished us with a copy of Datalink's invoice for the computer equipment dated February 24, 1986, with a date stamp indicating that the EEOC received the invoice on March 10, 1986.

2/ Specifically, this notation on the invoice states that payment should be made to the original vendor in accordance with instructions from Larry Butler (a procurement specialist at the EEOC).

3/ This amount represents the difference between the amount due under the assigned invoice and the amount Datalink says it received from IRA.

Nevertheless, in a letter dated September 5, 1986 to Datalink's legal representative, it denied Datalink's claim because "copies of the assignment agreement were never received by anyone at the EEOC until after payment was made to IRA and there was "no record that anyone in authority at the EEOC ever consented to such an asserted assignment or ever agreed that the payment under the purchase order could be made to anyone other than the original contractor. . . ."

ANALYSIS

Under 41 U.S.C. § 15, the transfer of a government contract or order or interest therein from the original contractor to any other party is prohibited. The statute further provides that "any such transfer shall cause the annulment of the contract or order transferred" as far as the United States is concerned. An exception is specifically granted, however, when the only interest that is transferred or assigned is the contractor's right to receive payment under the contract, provided that the other requirements set forth in the statute for a valid assignment of the contract proceeds are satisfied.

The assignment agreement in this case, which states that IRA "does hereby sell, transfer, and assign" the purchase order to Datalink makes it appear that IRA's obligation to perform under the purchase order had been assigned to Datalink. This would violate the prohibition in 41 U.S.C. § 15 against transfer of a government contract and presumably would have given the EEOC the right to declare the purchase order to be null and void. However, this was not done. IRA, not Datalink, delivered the computer equipment to the EEOC as required under the purchase order, and the EEOC accepted and used the computer equipment. Even after the EEOC was advised of the assignment, it continued at all times to treat the contract as valid and in force, making payment in full to IRA in accordance with the terms of the purchase order. Based on these and other factors,4/ we do not think that any of the parties to this transaction intended or viewed the assignment of the purchase order as anything other than the purported assignment of the proceeds due

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4/ For example, the letter dated February 24, 1986, in which the President of IRA notified the EEOC of the assignment, states that IRA had assigned "payment on this account" to Datalink and that the assignment was "for accounting purposes only." Moreover, the EEOC was never asked or required to deal with Datalink for any reason relating to the contractor's obligation to perform under the purchase order.

under the purchase order, the validity of which was and remains in dispute, insofar as the United States is concerned. Accordingly, the remainder of this opinion will analyze Datalink's claim on that basis.

As a general rule, the assignment of moneys due under a government contract is not binding on the United States unless the assignment is made in strict compliance with the requirements of the Assignment of Claims Act, 31 U.S.C. § 3727 and 41 U.S.C. § 15.5/ See 55 Comp. Gen. 155, 157 (1975). It is well-settled, however, that if the government has received notice of an assignment that satisfies all of the requirements of the Assignment of Claims Act, and thereafter erroneously pays the assignor, it remains liable to the assignee for the amount of the erroneous payment. See 65 Comp. Gen. 598 (1986); 61 Comp. Gen. 53 (1981); B-206902, June 1, 1982; and Central Bank of Richmond, Virginia v. United States, 117 Ct. Cl. 389 (1950).

For purposes of Datalink's claim, two of the requirements set forth in 41 U.S.C. § 15 are relevant. First, assignments under 41 U.S.C. § 15 are only recognized as valid and binding on the government if they are made to a "financing institution." One of the primary purposes of the Assignment of Claims Act is "to make it easier for Government contractors to obtain private financing in order to carry out Government contracts more effectively." See B-108439, Nov. 4, 1976. Thus, since Datalink is not a financing institution, the assignment in question did not satisfy that requirement and was not binding on the United States. See B-187283, Nov. 4, 1976; B-187456, Nov. 4, 1976; B-200603, Nov. 4, 1980; and Pan Arctic Corp. v. United States, 8 Cl. Ct. 546, 547-48 (1985).

In addition, 41 U.S.C. § 15 expressly requires the assignee to "file written notice of the assignment together with a true copy of the instrument of assignment with (a) the

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5/ Specifically, 31 U.S.C. § 3727 prohibits the assignment of claims except under certain circumstances, whereas 41 U.S.C. § 15 prohibits the transfer of contracts or any interest therein except where the transferred interest consists of an assignment of the moneys due under the contract that is carried out in accordance with the other statutory requirements. Since the substantive provisions of the two statutes are the same for the purposes of determining the validity of an assignment of the proceeds due under a contract, the remainder of this opinion will refer only to the provisions of 41 U.S.C. § 15 as a matter of convenience.

contracting officer or the head of his department or agency . . .; and (c) the disbursing officer, if any, designated in such contract to make payment." It has been held that the assignee's failure to notify both the contracting and disbursing officers can bar the assignee's claim under the assignment. See 63 Comp. Gen. 42 (1983).

Although the EEOC originally maintained that it paid IRA before it received any notice that payment had been assigned to Datalink, it now concedes that was not the case. On or about March 10, 1986, EEOC's Finance Branch did receive a letter from the President of IRA and invoices from both IRA and Datalink, indicating that an assignment had been made. Furthermore, it appears that EEOC's contracting officer, who was handling this procurement, was advised of the assignment before payment was made to IRA. However, copies of the assignment agreement itself were not furnished to the EEOC until well after payment to IRA. While it thus appears that the contracting officer and the disbursing officer were notified of the assignment as required by the Assignment of Claims Act,6/ the additional statutory requirement that the notice include a "true copy of the instrument of assignment" was not satisfied.

Although it is clear for both of these reasons that IRA's assignment did not satisfy all of the statutory requirements contained in the Assignment of Claims Act and therefore was not legally binding on the government, the EEOC may still be liable to Datalink. It has consistently been recognized by the courts that "the Government can choose to recognize an assignment notwithstanding the bars of the two statutes [31 U.S.C. § 203 and 41 U.S.C. § 815 . . .]." See Maryland Small Business Development Financing Authority v. United States, 4 Cl. Ct. 76 (1983).

Thus, in Tuftco Corporation v. United States, 614 F.2d 740 (Cl. Ct. 1980), the court upheld the claim of an assignee that was not a financing institution and had failed to provide notice in the form required by the Assignment of

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6/ Under 41 U.S.C. § 15, notice must be given to the contracting officer and the disbursing officer "if any, designated in the contract to make payment." While the copy of the purchase order furnished to us did not designate a specific disbursing officer, it directed the contractor to submit its invoice to EEOC's Finance Branch, which would serve as the payment office. Thus, we view notice to the Finance Branch as the legal equivalent of notice to an individual disbursing officer.

Claims Act.7/ In holding that the government had waived the requirements of the Assignment of Claims Act, the court relied on the fact that the contracting officer had acknowledged the assignment in writing and the agency had made the first of the required payments under the contract to the assignee. The court said the following in its opinion:

> "It is unnecessary to identify any one particular act as constituting recognition of the assignments by the Government. It is enough to say that the totality of the circumstances presented to the court establishes the Government's recognition of the assignments by its knowledge, assent and action consistent with the terms of the assignments." 614 F.2d at 746. (Emphasis added.)

Similarly, in American Financial Associates, Ltd. v. United States, 5 Cl. Ct. 761 (1984), the court relied on the standards set forth in Tuftco to determine that the government had waived the requirements of the Assignment of Claims Act with respect to one contract, but had not waived the statutory requirements for another assigned contract. The court said the following in its decision:

> " . . . the courts have never suggested that the government can waive only those elements of the Act that pertain to nonfinancial institutions; to the contrary, the provisions of the Anti-Assignment Act have been deemed waived to the benefit of financial as well as nonfinancial institutions, even if all of the statutory prerequisites have not been complied with by the assignee." 5 Cl. Ct. at 771.

Our Office has applied the Tuftco waiver standards in determining whether or not the government was bound by an assignment that did not satisfy all of the requirements of the Assignment of Claims Act. In Centennial Systems, Inc., 61 Comp. Gen. 53 (1981), 81-2 CPD 403, we relied on the Tuftco decision in holding that an assignment was binding on the government where the agency involved was aware of and had "recognized" the assignment, even though notice of the assignment was not given to the agency as required under the

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7/ In Tuftco, as in the present case, the assignee never provided the contracting officer with a true copy of the instrument assignment. The court did not discuss whether or not the assigned contract designated a disbursing officer to make payment or whether the assignee provided the disbursing officer, if any, with notice of the assignment.

Act. Our Office relied on the same standards in denying an assignee's claim in Bank Leumi Le-Israel, B.M., 63 Comp. Gen. 42 (1983), which was upheld in Bank Leumi Le-Israel, B.M.-- Reconsideration, B-212599, Sept. 5, 1984, 84-2 CPD 254.

Applying the waiver standards enunciated in Tuftco (and the other cited decisions) to the case at hand, we do not think that the government waived either of the requirements of the Assignment of Claims Act discussed herein. While it is undisputed that officials at the EEOC received notice of the assignment, albeit not in the required form and not to a statutorily eligible assignee, there is no evidence that would indicate that any personnel at the EEOC ever recognized or assented to the assignment or agreed that payment would be made to anyone other than the original contractor. In fact, the two notations on IRA's invoice stating, first, that payment should not be made until additional documentation concerning the assignment was received and, second, that payment would be made to the original vendor, indicate that the assignment was never recognized or agreed to by the EEOC.8/

In accordance with the foregoing, we must deny Datalink's claim because the assignment did not comply with the requirements of the Assignment of Claims Act and the EEOC never recognized or consented to the assignment.

Milton J. Socolar

for Comptroller General
of the United States

8/ We were informally advised by officials of the EEOC that the decision to pay the original vendor was made because the assignment did not comply with the statutory requirements in that the assignee was not a financing institution and proper notice of the assignment was not furnished by the assignee.