# Fair's fair: Adjudicator's use of own 'fair and reasonable' rates did not offend against natural justice

In *Clegg Food Projects Limited v Prestige Car Direct Properties Limited [2025] EWHC 2173 (TCC)*, the Technology and Construction Court considered whether an adjudicator's failure to consult with the parties before using his own 'fair and reasonable' rates to value Changes constituted a material breach of natural justice.

The judgment provides clear guidance on how far an adjudicator can rely on their own sense of what is "fair and reasonable" without exceeding the limits of their jurisdiction.

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## Key takeaways:

- **Adjudicators are afforded wide discretion when assessing individual items within the context of a gross valuation**
- **Adjudication is designed to be a rough-and-ready process and does not require hyper-detailed scrutiny: "*granular, technical complaints*" about the adjudicator's method won't prevent enforcement of an adjudicator's decision.**

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## Factual Background

Prestige Car Direct Properties Limited ("**Prestige**") engaged Clegg Food Projects Limited ("**Clegg**") under an amended JCT Design and Build contract for the construction of a leisure and retail centre in Bishop Auckland. Disputes arose over Payment Application 37, including as to the value of certain Changes; Clegg's entitlement to extensions of time; and Prestige's claim for liquidated damages ("the **Application**").

Clegg referred the dispute to adjudication, seeking a declaration that the Application be valued in the gross sum of £23,502,636.65 plus VAT or "*such other sum as the adjudicator may decide.*" Prestige responded with a much lower assessment.

In the event, the Adjudicator rejected both parties' figures and instead applied his own "*fair and reasonable*" rates based on his view of the work involved – albeit that every figure selected sat within the boundaries proposed by the parties, mostly landing between the two. The net sum awarded to Clegg amounted to £541,880.12 plus interest and fees.

Prestige refused to pay, claiming it was a breach of natural justice for the Adjudicator to use his own rates for the valuation without first consulting with the parties and inviting their comments. Clegg applied for summary judgment to enforce the decision.

## Legal Arguments

Prestige raised two principal arguments:

1. In failing to consult with the parties, the Adjudicator breached the rules of natural justice. By using his own 'fair and reasonable' rates, and in one instance remeasuring work to arrive at a valuation, the Adjudicator made new calculations that neither party had the chance to see or comment on.

2. The reasons provided with the Adjudicator's Decision were insufficient. Prestige claimed the Adjudicator did not explain clearly enough how and why his decision was reached, leaving the parties unable to understand or scrutinise the outcome.

Clegg responded that the Adjudicator was allowed to use his own knowledge and experience in determining the gross value of the Application, as both sides had put forward their own ranges and invited him to choose any amount he felt was right. The Adjudicator's task was to reach an overall valuation, not to declare specific rates line by line.

Clegg emphasised that adjudication is meant to be a rough-and-ready process, not a full-blown trial. It claimed Prestige was putting up a smokescreen of "excessively granular" complaints to attempt to distract from the key facts.

**<u>Held</u>**

Rejecting Prestige's arguments, HHJ Kelly enforced the Adjudicator's decision and gave the following analysis:

**1. No breach of natural justice**

- Both parties had invited the adjudicator either to accept their position or value the Application in such other sum as he saw fit. This gave the adjudicator wide discretion to value the variations using his own expertise, even if he ultimately came to a different view than either of the parties.
- Applying 'fair and reasonable' rates was entirely proper; the Adjudicator used the submissions and documentation provided by the parties, and the rates selected were within the bounds proposed by the parties.
- Most of the Adjudicator's rates actually *favoured* Prestige, saving them over £200,000. The two items that favoured Clegg only cost Prestige an extra £2,600, less than 0.2% of the total.
- The judge agreed that Prestige's objections were "excessively granular". There could be no real or serious injustice arising from a failure to consult about rates which overwhelmingly worked in its favour.

**2. Adjudicator's reasons were sufficient**

- While some of the Adjudicator's reasons were "*broad brush,*" they were not inadequate. His decision ran to 88 pages and was detailed enough for everyone to understand how he came to his final numbers. The Adjudicator provided additional workings out when Prestige requested them, and no deficiencies were revealed in his calculations.
- The Adjudicator was asked to make a global valuation. He did not have to spell out every detail of his approach or consult with the parties on every element of his thinking.
- The standard for natural justice is whether the Adjudicator's reasons were so vague that a reasonable reader couldn't follow them — a threshold Prestige did not meet. More detailed reasoning might have been preferable, but the decision was coherent and, in any case, Prestige could not show real injustice.

**<u>Comment</u>**

For adjudication to work as a quick, practical dispute resolution tool, adjudicators must have wide latitude to exercise their judgement within the remit given, without fear of granular post-mortems that make no material difference. Here, the court made clear that it will not unpick every methodological choice unless the adjudicator has plainly gone off on a frolic of their own.