

Construction Law Update

TCC Refuses to Enforce £1.6m Award Where Adjudicator Embarks on a Frolic of His Own

Premier Modular Ltd v Maidstone and Tunbridge Wells NHS Trust [2026] is a rare case in which the Technology and Construction Court refused to enforce an adjudicator's award on the grounds that the adjudicator had breached the rules of natural justice by deciding the dispute on a basis neither party had argued.

There's a fine line between an adjudicator making legitimate use of their experience to reach a decision and going off on a frolic of their own. The acid test is whether the adjudicator's process is fair and allows both parties a sufficient opportunity to address the issues that will actually decide the case.

Key takeaways:

- An adjudicator is entitled to reach independent conclusions, but not to invent a case that goes beyond and against what both parties submitted without giving them a chance to respond. Doing so breaches natural justice, making the decision invalid.
 - The Courts recognise that adjudicators face a difficult task in dealing with disputes on very short timescales, but pressure is not a defence to obvious unfairness.
 - There remains a very high bar for resisting enforcement and natural justice challenges will succeed only in rare cases of plain and obvious unfairness.
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Factual Background

In August 2023, Premier Modular Ltd (“PML”) and Maidstone and Tunbridge Wells NHS Trust (“the Trust”) entered an NEC4 Option A contract for the design and construction of a new modular operating theatre at Maidstone Hospital, with a total tender price of around £19.8 million (the “Contract”).

A dispute arose over the Trust's failure to provide a permanent mains water supply in time for PML to test and commission its work. PML claimed the Trust was required to provide the water mains supply by 30 October 2023 but failed to do so until 20 February 2024, which PML argued constituted a compensation event under the Contract. PML launched a successful adjudication, securing a decision in its favour for £1.6 million.

The Adjudication

Both parties had agreed during the adjudication that the only “Accepted Programme” under the Contract was the original programme attached at Appendix 3, which imposed no specific obligation on the client to provide water by a particular date. Under Clause 60.1(3) of the Contract, a compensation event arose where the employer failed to provide something it was required to provide by a date shown on the Accepted Programme, but as no such date existed for the water supply, neither party had raised or relied on clause 60.1(3) in the adjudication.

The Adjudicator nonetheless decided that PML's claim succeeded under clause 60.1(3). He held that a later, revised programme had become the Accepted Programme for these purposes despite both parties having agreed that this revised programme had never been formally accepted under the Contract.

The Trust resisted enforcement, arguing the Adjudicator breached natural justice by deciding the claim on a factual and legal basis that neither party had argued.

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Held

Adrian Williamson KC refused summary judgment to enforce the Adjudicator's decision for the following reasons:

1. Was the Adjudicator entitled to reach his own view, even if it departed from both parties' submissions?

It's a well-established principle that adjudicators are not passive umpires. They can form their own conclusions on the material before them, even where those conclusions differ from both parties' positions. This alone is not a breach of natural justice.

2. Did the Adjudicator cross the line into a "frolic of his own"?

Here, the Judge held he did. The Adjudicator's basis for his decision, that clause 60.1(3) was relevant or that the Accepted Programme had been updated, was:

- Not argued by either party.
- Directly contrary to the parties' agreed common position on what the Accepted Programme was.
- Never put to the parties for comment.

In effect, the Adjudicator invented a case for PML which he considered superior to the one PML actually advanced, rather than adjudicating the dispute the parties had put before him. This was not an adjudicator simply overlooking a point under time pressure, but the active construction of a route to the result which PML had not made and which the Trust had no proper opportunity to deal with.

3. Should the Court nonetheless enforce, given the high bar for interfering with adjudicators' decisions?

The Judge reaffirmed the guidance in *Carillion Construction Ltd v Devonport Royal Dockyard Ltd* [2005] EWCA Civ 1358 that Courts should be slow to interfere with adjudicators' decisions and that

enforcement should be resisted only in rare cases of plain, obvious unfairness. However, the Judge found this was one of those rare cases. Where an adjudicator's frolic produces an unfair result, the Court will refuse to enforce.

Comment

While an adjudicator is entitled to reach their own conclusions and is not confined to choosing between the parties' rival positions, they cannot decide a dispute on a wholly new factual or legal basis that neither party argued and that the parties were never given a chance to address. Doing so is going off on a "frolic of their own," and it renders the decision unenforceable for breach of natural justice.

For contractors and employers, this is a reminder that adjudication decisions can be successfully challenged, but only in rare situations where the adjudicator decides a dispute on a factual or legal basis which has not been put forward by either party, without giving the parties an opportunity to comment upon. Anyone facing an adjudication decision that feels like it has come out of nowhere should look closely at whether the reasoning was actually argued by either side before assuming it must be paid.

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