

CONSTRUCTION ENGINEERING MASTERS DISSERTATION ABSTRACT

An unenforceable award

(Why Construction Sector Adjudication Awards of England & Wales, including those utilising the Statutory Right under 'The Construction Act 1996', are Deemed Unenforceable)

The UK construction sector, like many others worldwide, had a problem with disputes and litigation. The prevalence of adversarial action was such that Parliament, in an effort to provide a quick and low-cost mechanism for the resolution of disputes, deemed it necessary to implement a statutory right to adjudication. While successful in the main, the phenomena of awards either requiring enforcement or being challenged in the courts limits the assurances parties utilising adjudication have of receiving an enforceable award. In response the courts have sought to enforce awards wherever possible, acknowledging that adjudication awards offer an interim position pending final determination if required. Nevertheless, recognised reasons have developed in case law where the courts are not prepared to order enforcement.

The aim of the research is to identify reasons Awards, including those under the statutory right to construction adjudication are deemed unenforceable so as to provide recommendations that would minimise such occurrences. A by-product of the research is the compilation of a definitive list that will aid practitioners within the Construction Disputes Sector in isolating flaws within future Awards.

This research examines and interrogates the judgments handed down in the Technology and Construction Court of England and Wales over a ten-year period, so as to identify both the frequency with which adjudication awards are deemed unenforceable. Through archival research and a two-stage codification process, all causative phenomena are identified through the use of Axial Coding and Axial Sub-Coding. A total of 41 examples are categorised into 5 Axial Codes and 12 Axial Sub-Codes with the two most prevalent Axial codes of "Lack of Jurisdiction" and "Breach of Natural Justice" accounting for 80.5% of all occurrences. This is in line with the established principles identified in case law. The research goes on to establish a definitive list of the range of matters that the court will consider as grounds for deeming an adjudication award unenforceable. That said, the presence of trends in the reasons the courts are deeming awards to be unenforceable does raise the question whether those phenomena identified will be replaced in time by new reasons beyond the scope of this research in years to come. The thesis concludes by highlighting potential avenues for further study including the utilisation of alternative research methodologies and the widening of research perimeters. It is concluded that the opportunity to undertake interviews with the judiciary would lead to the most conclusive and complete data set.

Following analysis of the data set, conclusions are drawn as to the underlying issues responsible for the occurrence of these phenomena and solutions are tentatively advanced as to how they may be mitigated in future.

Keywords: *Construction Disputes, ADR, Adjudication, Enforcement, Causative Phenomena, Litigation, Dispute Resolution, Adjudicator, Technology and Construction Court, Judgments, Jurisdiction, Breach of Natural Justice.*

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