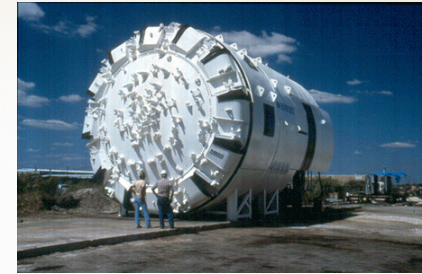
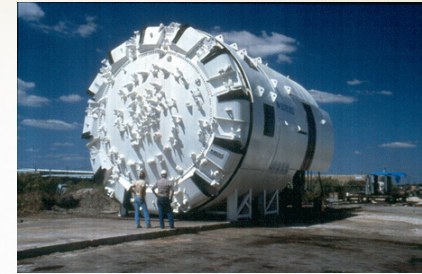


Dispute Resolution – A Practical Example (Handout)



- Dispute resolution clause from the “Channel Tunnel” contract:
- *Clause 67: Settlements of disputes*
- “(1) If any dispute or difference shall arise between the employer and the contractor during the progress of the works (but not after the issue of the maintenance certificate for the whole of the works or the last of such certificates under clause 62(1) or after abandonment of the works or termination or alleged termination of the contract), then, subject to article 6(4) clauses 73(5) and 74(4) and the rules of the procedure for the calling in of the performance bond in schedule 25, such dispute or difference shall at the instance of either the employer or the contractor in the first place be referred in writing to and be settled by a panel of three persons (acting as independent experts but not as arbitrators) who shall unless otherwise agreed by both the employer and the contractor within a period of 90 days after being requested in writing by either party to do so, and after such investigation as the panel think fit, state their decision in writing and give notice of the same to the employer and the contractor. The panel shall be constituted in the manner set out in clause 67(6).”

Dispute Resolution – A Practical Example (Handout)



- **"(2) The contractor shall in every case continue to proceed with the works with all due diligence and the contractor and the employer shall both give effect forthwith to every such decision of the panel (provided that such decision shall have been made unanimously) unless and until the same shall be revised by arbitration as hereinafter provided. Such unanimous decision shall be final and binding upon the contractor and the employer unless the dispute or difference has been referred to arbitration as hereinafter provided.**
- **"(3) Subject to article 6(4) of the contract agreement, if: (i) either the employer or the contractor be dissatisfied with any unanimous decision of the panel given under clause 67(1), or (ii) the panel shall fail to give a unanimous decision for a period of 90 days, or such other period as may be agreed by both the employer and the contractor, after being requested by either party to do so, or (iii) any unanimous decision of the panel is not given effect in accordance with clause 67(2) then either the employer or the contractor may within 90 days after receiving notice of such decision or within 90 days after the expiration of the said period of 90 days or such other period as may be agreed by the employer and the contractor (as the case may be) notify the other party in writing that the dispute or difference is to be referred to arbitration. If no such notice has been given by either party to the other within such periods, the panel's decision shall remain final and binding upon the parties. . . ."**

Dispute Resolution – A Practical Example (Handout)



- **"(4) All disputes or differences in respect of which a notice has been given under clause 67(3) by either party that such dispute or difference is to be referred to arbitration and any other dispute or difference of any kind whatsoever which shall arise between the employer or the Maître d'Oeuvre and the contractor in connection with or arising out of the contract, or the execution of the works or after their completion and whether before or after the termination, abandonment or breach of the contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed under such Rules. The employer and the contractor shall each nominate and appoint one arbitrator and the third arbitrator shall be appointed by the International Chamber of Commerce. The seat of such arbitration shall be Brussels. Save as provided in clause 67(3), the said arbitrator/s shall have full power to open up, revise and review any decision, opinion, direction, certificate or valuation of the employer and/or the Maître d'Oeuvre. Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the panel for the purpose of obtaining his said decision. No decision given by the panel in accordance with the foregoing provisions shall disqualify a member of the panel from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute or difference referred to the arbitrator/s as aforesaid.**
- **"(5) The reference to arbitration may proceed notwithstanding that the works shall not then be or be alleged to be complete, provided always that the obligations of the employer and the contractor shall not be altered by reason of the arbitration being conducted during the progress of the works."**

Dispute Resolution – A Practical Example (Handout)



- **Liquidated damages or penalty?**
- “8.7.1 Subject to the limitations contained in this Clause 8.7, if the requirements of Clause 8.2 [Time for Completion] are not complied with, the Contractor shall...pay delay damages to the Employer for this default at the rate set out in Clause 8.7.2 below. These delay damages shall be paid for every day which shall elapse between the relevant Time for Completion up to and including the date of issue of the Taking-Over Certificate. For the avoidance of doubt, the Contractor will be entitled to an extension of time pursuant to Clause 8.4.1(c) to the extent that it suffers any delay, impediment or prevention caused by or attributable to other contractors on the Site (including for the avoidance of doubt the Wind Turbine Contractor) subject to compliance by the Contractor of his applicable and relevant obligations under this Contract and under the Interface Agreement.
- 8.7.2 The amount of delay damages shall be £642...for each MW of the total installed capacity for the Plant which is unavailable ("Unavailable Capacity") for each day of such unavailability for the period from 1 October to 31 March and £385... for each MW of Unavailable Capacity for each day of such unavailability for the period from 1 April to 30 September, provided that the Contractor's maximum total liability to pay delay damages under this Clause 8.7 shall not exceed 50%...of the Contract Price...”