The Use of Dispute Boards in Europe: Expectations, Concerns and Experiences

The CERN-Experience

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- CERN-projects
- contractual terms
- dispute resolution
- summary

CERN-projects
<table>
<thead>
<tr>
<th>Construction Sites</th>
<th>Contractor</th>
<th>Engineer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cavern „Atlas“</td>
<td>Zschacke-Locher (CH) Barest (D) Porr (A)</td>
<td>EDF (F) Knight&amp;Piesold (GB)</td>
</tr>
<tr>
<td>Cavern „CMS“</td>
<td>Dragados (E) SELL (I)</td>
<td>Gibb-UK (GB) Geoplastalt (A) SGI (CH)</td>
</tr>
<tr>
<td>Tunnels/Shafts</td>
<td>Taylor Woodrow (GB) AMEC (GB) Soie-Batignolles (F)</td>
<td>Brown&amp;Root (GB) Inteca (E)</td>
</tr>
<tr>
<td>Tunnel „TIB“</td>
<td>Losinger (CH) Prader (CH)</td>
<td>Brown&amp;Root (GB) Inteca (E)</td>
</tr>
<tr>
<td>Tunnel „CNGS“</td>
<td>Soie-Batignolles (F) Condotte d’Aqua (I)</td>
<td>Gibb-UK (GB) Gibb-Heilas (GR)</td>
</tr>
</tbody>
</table>

### Contractual Terms

- FIDIC red book 1987 + amendments
- „dispute adjudication board“ (DAB)
- „Employer“ instead of „Engineer“ in all contractual issues
- No „geotechnical interpretative report“

### Comparison to ÖNORM B2203

- Integrate parts of contract as per ÖNORM B2203
- Ground parameter („data“)
- Geotechnical interpretative report
- Construction details + specifications + bill of quantities

- Integrate parts of contract as per FIDIC red book
- Ground parameter („data“)
- Missing contractual document

- Potential for conflicts
- FIDIC clause 11.1: Independent Interpretation of Data by Contractor
**dispute adjudication board (DAB)**

- accompanying adjudication – no „ad hoc“
- 5 members of DAB incl. chairman; 3 for each case
- DAB for construction and consulting contracts
- exclusively engineers, no legal experts
- decisions within 35 days (including financial valuation)
- decisions contractually „binding“ until taking over
- reimbursement in daily fees, 50% each by contractor/employer

**resolved disputes**

- disputed cases amount between 0,5 und 11 Mio CHF

<table>
<thead>
<tr>
<th>Case</th>
<th>Contractor/Employer</th>
<th>Amount (Mio CHF)</th>
<th>Decision of DAB in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Contractor/Employer</td>
<td>11,0</td>
<td>70%</td>
</tr>
<tr>
<td>B</td>
<td>Contractor/Employer</td>
<td>8,0</td>
<td>20%</td>
</tr>
<tr>
<td>C</td>
<td>Engineer/Employer</td>
<td>0,5</td>
<td>40%</td>
</tr>
<tr>
<td>D</td>
<td>Contractor/Employer</td>
<td>2,5</td>
<td>0%</td>
</tr>
</tbody>
</table>

**general experiences of DAB**

- high importance of regular site visits
- separate meetings with contractor and Engineer/Employer
- short period of 35 days for decision of DAB = feasible
- period of 14 days for „response“ = too short
- missing „geotechnical interpretative report“ = potential for conflicts
- geotechnical design by Contractor = potential for conflicts
- missing „rates and prices“(„Urkalkulation“) = potential for conflicts
summary

expectations have been met but some potential concerns:

- reasoning of DAB in conflict to agreements by the parties or determinations by the Engineer of precedently settled claims

- Employers reluctance to take responsibility = many cases for settlement by DAB

- decisions of DAB in favour of Contractor = many cases for settlement by DAB
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Thank you for your attention!