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Ripley Vs. United States

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Court : US Supreme Court

Decided On : Apr-24-1911

Appeal No. : 220 U.S. 491

Appellant : Ripley

Respondent : United States

Judgement :

Ripley v. United States - 220 U.S. 491 (1911)
U.S. Supreme Court Ripley v. United States, 220 U.S. 491 (1911)

Ripley v. United States

No. 887, 888

Submitted March 10, 1911

Decided April 24, 1911

220 U.S. 491

APPEALS FROM THE COURT OF CLAIMS

SYLLABUS

This Court may not draw an inference of bad faith on the part of a government inspector unless the findings are so clear on the subject as to take the inference beyond controversy.

It is the duty of the Court of Claims in dealing with the question of bad faith on the part of a government inspector to explicitly find the facts in regard to that subject.

The Court of Claims should find as a fact whether or not complaints were made to the proper officers as to improper conduct on the part of subordinates, and if made, when and what action was taken thereon.

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Where proper finding are not made by the Court of Claims on specific matters to enable this Court to properly review the judgment, the record will be remanded to that court for additional findings as to such matters, *United states v. Adams,* 9 Wall. 661, and so ordered in this case, with instructions to return to this Court with all convenient speed.

45 Ct.Cl. 621 remanded with instructions.

The facts, which involve the construction of a contract for public works with the United States and the validity of claims made by the contractor thereunder, are stated in the opinion.

MR. CHIEF JUSTICE White delivered the opinion of the Court.

These are cross-appeals from a judgment entered by the Court of Claims against the United States and in favor of Henry C. Ripley. The claim of Ripley was based upon a written contract between himself and the United States, executed on April 6, 1903, containing numerous stipulations, by which in substance Ripley agreed to furnish materials for and do certain jetty work at Aransas Pass, Texas, authorized by an Act approved June 13, 1902, 32 Stat. 340, c. 1078.

In his amended petition, Ripley set forth numerous items of damage, aggregating $45,930, which it was asserted resulted from violations by the United States of the terms of the contract. Judgment was entered against the United States for $14,732.05. 45 Ct.Cl. 621. Ripley prosecuted this appeal in order to obtain an increased allowance,

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while the United States, by its cross-appeal, seeks a reversal of the judgment.

Among other things it was provided in paragraph 61 of the specifications as follows:

"Between Stations 20 and 27, and from the vicinity of Station 55, seawards, the method of construction shall be as follows: a mound of small riprap shall first be built up over and around the existing structure to about one foot elevation. When, in the judgment of the U.S. agent in charge, this mound has become sufficiently consolidated, its gaps and interstices shall be filled and its crest leveled with small riprap, generally one-man stone. Large blocks shall then be bedded in crest of mound in two rows, breaking joints with their longest dimensions parallel to the axis of jetty in such manner that voids under the placed blocks will be at a minimum, and side slopes and remainder of crest shall then be covered with large riprap."

A large sum was demanded by Ripley, upon the contention that the completion of the work was greatly delayed owing to the fact that

"on the portion of the line where no foundation had previously been laid, and where petitioner therefore placed the foundation materials, said Captain Jadwin and the subordinate officers in charge forbade and restrained petitioner from imposing the cap blocks until long after the foundation, in their judgment and, in fact had become sufficiently consolidated and they had caused the crest to be leveled."

On this branch of the case, the Court of Claims found as follows:

" VII "

"In the performance of said work, it was advantageous to claimant to have his employees operate on the lee side of the structure, where they could be protected from the action of the rough seas, and for this purpose it was desirable that he be allowed to impose the crest block on the top of the core as rapidly as possible, so that the waves

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could not pass over it and interfere with the workmen, and thus prevent delay in the completion of the contract. The Aransas Pass Harbor Company had laid the foundation for the entire jetty and for 2,800 feet -- that is, between Stations 27 and 55, the entire core of the structure had been built up, and between Stations 27 and 40 the crest blocks had been laid. The foundation and the core thus previously constructed were fully consolidated when the contract with claimant was let."

"When claimant had completed from 100 to 200 feet of the core, he requested from the inspector in charge permission to begin to lay crest blocks, which was refused on the ground that the core had not consolidated. By the end of December, 1903, claimant had completed 400 to 500 feet of the core, and again he requested permission to impose the crest blocks. Said inspector refused, and continued to refuse permission to lay said crest blocks until May, 1904 at which time between 1,400 and 1,500 feet of the core had been repaired and completed. Commencing in October, 1903, when about 300 feet of the core had been built up to the required elevation, slope stones were laid on the jetty, which afforded some protection from the action of the waves to the riprap already constructed, but not as much protection as the crest blocks would have afforded. When claimant was thus laying the slope stones, and throughout December, 1903, and January, February, March, and April, 1904, it was manifest that large parts of the work done by him had fully settled and consolidated. If claimant had been permitted to lay the crest blocks from that time on, as the work progressed, there would have resulted an additional protection which would have enabled him to work sixty days more than he did between that time and May 7, 1904, date the first crest blocks were

laid. When claimant was seeking permission to lay the crest blocks as aforesaid, the inspector, in refusing same, alleged as a reason that the jetty had not had sufficient time to

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consolidate, and it does not appear that any other reason was at any time given by said inspector for so refusing."

In the brief of counsel for Ripley it is said:

"This Court will perceive that, with the exception of two matters of minor importance, to which we will hereafter briefly refer, the main complaint involved in this appeal is the erroneous application of Finding VII to the judgment. The Court of Claims, in Finding VII, has found that, as early as October, 1903, claimant was endeavoring to obtain permission to lay the crest blocks on the core of which 'it was manifest that large parts . . . had fully settled and consolidated.' 'Manifest,' according to all the dictionaries, means 'clear,' 'plain,' 'evident to the eye and understanding.' So that, if it was 'manifest' that the core had fully settled and consolidated, it naturally follows that this was known to the inspector, and that the denial of the permission to lay the crest blocks (which the claimant had the right to do upon the consolidation of the core) was such a fraud as entitles him to recover the damages he has thereby suffered. The claimant's right to recover could not be more complete had the Court of Claims found in so many words that the decisions of the government's officer were grossly fraudulent and made in bad faith. Apparently the Court of Claims, with delicate considerations for the feelings of the engineer department, chose to employ different, though just as effective, language. But for the denial of this permission to lay these crest blocks, they would have been laid, and thus substantially all of the delay in the completion of the contract would have been avoided."

We are of opinion, however, that, while it may be open to conjecture that the word "manifest" as used by the court in its finding is susceptible of the broad significance which the argument thus imputes to it, we do not think such meaning

is so clear and free from doubt as to justify us in concluding that there was bad faith on the part of the government inspector in charge of the work. We say

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this because it is certain that we may not draw the inference of bad faith unless the findings are so clear on the subject as to cause such inference to be plain beyond controversy. It follows, therefore, that the finding below on the subject of the knowledge and good faith of the inspector is so incomplete and inconclusive as to render it impossible for us to decide the cause without grave risk of doing wrong to the plaintiff or serious injury to the government. It was the clear duty of the court below, in dealing with the question of bad faith on the part of the government inspector, not to leave that subject dependent upon an ambiguous expression, susceptible of being construed one way or the other, but to explicitly find whether or not that which it states was manifest was or not known to the inspector, and whether that subordinate official acted in good or bad faith in the various refusals recited as having been made to the laying of the crest blocks and the reasons assigned for those refusals. Further, the court should have found as a fact whether or not complaint was made by the claimant, either to the engineer officer in charge or to the chief of engineers, as to the action of the subordinate inspector in refusing the requested permission, and, if complaint was made, when it was made, and what action was taken thereon.

Following the approved practice (*United States v. Adams,* 9 Wall. 661), the following order will be made:

Ordered: that the record in this case be remanded to the Court of Claims, and that said court be instructed to find and certify to this Court, as matters of fact, in addition to the facts found and certified in said record:

First. Whether, when the claimant was laying the slope stones, and during the months of December, 1903, and January, February, March, and April, 1904, as recited in Finding VII, the inspector in charge knew "that large parts of the work done by the claimant had fully settled and consolidated."

Second. Whether, in the various refusals to permit the laying of crest blocks, stated in Finding VII, the inspector in charge acted in good faith.

Third. Whether at any time the claimant notified the engineer officer in charge or the chief of engineers that the inspector in charge wrongfully refused to permit the laying of the crest blocks, and if such notice was given, whether it was oral or written, when the notice or notices were given, and what action, if any, was taken by such superior officer.

And it is further ordered that the said record, with the said additional findings of fact, be returned to this Court with all convenient speed.

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