



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: January 12, 2012

CBCA 2466

OTIS ELEVATOR COMPANY,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Bryan K. Pollard of Otis Elevator Company, Farmington, CT, counsel for Appellant.

James F. H. Scott, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

VERGILIO, Board Judge.

On August 8, 2011, the Board received this timely-filed appeal from Otis Elevator Company (contractor), concerning a dispute arising under its contract with the General Services Administration (agency), under which the contractor performed elevator maintenance and preventive maintenance services at the William S. Moorhead Federal Office Building in Pittsburgh, Pennsylvania. The contractor has elected the small claims procedure, such that this decision binds the parties but does not establish precedent. 41 U.S.C.A. § 7106(b) (West 2011); Rule 52. The Board denies the claim.

During an annual elevator brake maintenance/repair on November 4, 2009, the contractor removed and reinstalled cotter pins on the brake assembly of the elevator involved in this dispute. On June 30, 2010, the assembly dropped, damaging an armature. The agency directed the contractor to perform the required repairs, for which the contractor seeks \$47,985.92. The agency has denied the claim; it contends that the damage was caused by improper performance under the contract--either the reuse of a cotter pin that ultimately failed or the failure to replace the cotter pin during maintenance. The agency asserts that, under the terms of the contract, the contractor (not the agency) ultimately is liable.

Under the Description and Scope of Work clause, the contract requires the contractor to provide an effective preventive maintenance program. Exhibit 1 at 7, 19 (exhibits are in the appeal file). In particular, under the Scope clause, the contractor is to provide “all quality control, management, supervision, labor, materials, supplies, and equipment necessary to provide full elevator maintenance services for passenger elevators” in the building. Exhibit 1 at 19. Specifically, the contractor is to perform preventive maintenance. Exhibit 1 at 30. The contract defines “preventive maintenance” to be “[s]cheduled work on items of equipment or systems required to provide continuing operation, to preclude unnecessary breakdowns, and to prolong the life of equipment by checking, inspecting, testing, adjusting, repairing, cleaning, painting, lubricating, greasing, oiling, and replacing expendable items.” Exhibit 1 at 20. The contract specifically identifies applicable safety codes and standards. Exhibit 1 at 19-20. The parties represent that no language in the referenced codes and standards expressly permits or prohibits the reuse of cotter pins.

The parties attribute the damage either to the lack of a cotter pin or the failure of the cotter pin. Given the passage of time between the brake maintenance and the damage, the record does not support the notion that a cotter pin was not used. This leaves the question regarding the reuse of the cotter pin. The age and characteristics of the cotter pin have not been established.

The record does not permit a conclusion on the acceptable practice within the industry regarding the reuse of cotter pins. For example, a statement in the affidavit of an agency property manager, who expresses his “understanding” that the cotter pin is not to be reused, is of no evidentiary value, given his unstated credentials and unstated bases for his understanding. Exhibit 65. While the agency refers to and relies upon a published statement that cotter pins should not be reused, the statement is in an advisory circular from the Department of Transportation, Federal Aviation Administration, regarding acceptable methods, techniques, and practices for aircraft inspection and repair. Exhibit 67. There is no demonstrated relevance to this case involving elevators. Similarly, a broad statement on wikipedia that cotter pins should not be reused lacks sufficient persuasive authority to be given weight in resolving this dispute.

On behalf of the contractor, the record includes statements of individuals with pertinent experience who indicate that the “cotter pin used in the elevator brake assembly does not require preventative maintenance because it has no moving parts and its sole purpose is to secure a brake pin and hold it in place” and “cotter pins are not restricted to a one-time use.” Exhibits 102, 103. However, the cotter pins were subjected to removal at least annually for brake maintenance, are of an unspecified age (with references to them perhaps being as old as the equipment, thirty-five years), and may have been used more than

once. These statements do not address potentially often reused cotter pins or any expected life. Moreover, the references to the contractor's practices do not speak to industry practice.

The contractor makes several statements in a letter dated August 4, 2010, to the agency: "When servicing the brakes we must remove the cotter pins, at which time we provide a visual inspection, however this inspection is limited to what can be seen. Considering the above and lack of any visual damage Otis did not consider the cotter pin defective and reused accordingly." "The same debate occurs almost daily regarding light bulbs. If a light bulb is operating correctly should you change it? How do you anticipate when it will fail? Same is true of a cotter pin. Pin integrity failed, this is not maintainable nor is it predictable." "Otis did not recognize the need for cotter pin replacement during our inspections and break down of brake assemblies. Otis would have no way of knowing when a pin could or would fail." Exhibit 51 at 1.

These statements highlight the predicament of the contractor, particularly given the lack of specific guidance in safety codes. However, replacing a cotter pin only after it has failed (as suggested by the light bulb example) does not reflect preventive maintenance. The contractor has not demonstrated that it performed preventive maintenance pursuant to the terms and conditions of the contract. Specifically, the contractor has not shown that it was reasonable to reuse the cotter pin in question. This conclusion falls short of determining that cotter pins are or are not expendable items or otherwise should not be reused, as answers to those ultimate questions must await a different case and record.

In summary, the record demonstrates that the repairs were necessary because a reused cotter pin failed. The contractor has not demonstrated that the reuse of a cotter pin here complied with the preventive maintenance requirements of the contract. Therefore, the repairs do not constitute additional work for which the contractor must be paid. The contractor, not the agency, is liable for the cost of repairs to the damaged elevator.

Decision

The Board **DENIES** the appeal.

JOSEPH A. VERGILIO
Board Judge