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Unapproved Additional Works in Fast-Track Construction: How Contractors Get Paid

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In fast-track construction projects, time is the primary operational constraint. To stay on schedule, site engineers often order additional works verbally or through informal messages, putting off formal paperwork for later. However, standard contracts usually state that a contractor will not be paid without written notice and formal approval in advance. This creates a major legal dilemma: Is a contractor entitled to remuneration for additional work executed at the employer's request if the contractual mechanism was bypassed?

The contrasting stance of the employer and the contractor

Employers routinely defend against unpaid variation claims by asserting procedural non-compliance because under standard construction frameworks, contractors are required to submit written notice within a set timeframe and obtain formal written authorization before commencing variations.

On the other hand, the contractors argue that, in a fast-moving project, it may be impracticable to await formal written approval before carrying out additional work. They also contend that where such additional work is instructed or carried out on site and is actually performed, the absence of formal written approval should not, by itself, defeat their entitlement to payment because refusing payment in such circumstances would elevate procedural formalities over the practical requirements of completing the project.

The approach of Courts in Bangladesh

When a contractor bypasses formal approval due to the practical necessity of project completion, the courts focus on whether the employer "accepted and enjoyed" the benefit. If the answer is yes, the court will generally reject the employer's attempt to use procedural non-compliance as a shield against payment. In *A.K.M. Shahidul Hoque vs. Deputy Commissioner*, the High Court Division held that if a contractor performs extra work and the government/public authority accepts and enjoys it, the employer cannot use the lack of "prior administrative approval" to avoid paying.

In *Mam Trading Co. Ltd. v. Adamjee Jute Mills Ltd.*, the High Court Division recognized that the absence of a formal written contract does not necessarily preclude the existence of a contractual obligation. A contract may arise from the conduct of the parties where their actions demonstrate an intention to create a binding obligation. Thus, where work is performed and the other party accepts and derives the benefit of such performance, such conduct may establish an obligation to pay. This principle may be relevant where a contractor carries out additional work without obtaining prior formal written approval. If the contractor performs the additional work and the employer knowingly accepts and benefits from that work, the employer's conduct may evidence acceptance of the additional work and the existence of an obligation to pay for it. Accordingly, the absence of formal written approval should not, by itself, necessarily entitle the employer to deny liability where the employer has accepted and benefited from the additional work.

Waiver and the Principle of Estoppel

The employer's post-execution conduct regarding additional work can also decisively shift the legal framework. If an employer subsequently evaluates, approves, or releases partial payment against an unapproved additional work bill, such actions carry significant legal weight.

Under the doctrine of estoppel and general principles of the Contract Act, 1872, an employer who accepts an additional bill, performs post-facto reviews, or pays a portion of the variation cost waives its right to retrospectively enforce strict time-bar or prior-approval clauses. Partial payment acts as a clear admission that:

1. The additional works were necessary, authorized, and non-gratuitous.
2. Strict adherence to procedural time-limits was mutually waived.

Once an employer acknowledges the validity of a variation through partial payment or formal post-facto approval, it is legally estopped from retreating to procedural technicalities to deny the remaining balance owed for that same work.

The Evidential Risk: Why Field Documentation Remains Mandatory

While fast-track realities and waiver or estoppel principle support the entitlement to payment, this argument is not absolute. An entitlement to compensation does not eliminate the legal burden of proof. During litigation or arbitral proceedings, claims for unapproved work often fail due to evidentiary gaps. Courts and arbitral tribunals consistently hold that while prior formal approval may be excused under compelling circumstances, contemporaneous proof of the field requisition itself is non-negotiable.

To successfully establish a claim, a contractor must maintain meticulous, contemporaneous records, including:

- Written Field Requisitions & Site Instructions: Transcripts, email exchanges, site instruction sheets, or signed clerk-of-works logs confirming the request was made.
- Design Inputs & Minutes of Meetings: Records showing the employer modified technical inputs or acknowledged operational necessity on site.
- As-Built Measurement Records: Detailed site logs, survey notes, and bills of quantities showing the precise scope and cost of the extra work.

Without a clear paper trail demonstrating that the employer actually requested the work—and that it was not executed unilaterally by the contractor—court is likely to view the extra work as unauthorized or gratuitous. A lack of diligent record-keeping severely jeopardizes the contractor's legal standing in formal proceedings.

Conclusion

In fast-track construction contracts, speed does not negate accountability. While employers cannot hide behind procedural mechanisms to enjoy unpaid benefits, contractors cannot rely on oral assertions alone. Preserving entitlement for additional works requires maintaining robust contemporaneous site records, ensuring every informal field direction is immediately documented in writing to survive scrutiny during a formal proceeding.

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