

Delay vs Disruption: Know your claim?

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Delay and Disruption both are inherently interrelated but distinct issues. A loss of productivity i.e., disruption can lead to critical delay if the impacted activities are on a critical path. Similarly, a delay may result into disruption if the Contractor adopt acceleration measures to implement the Project which may lead to tasks being carried out at a lower productivity than the planned and at higher costs.

Delay and Disruption are often confusing to differentiate between. But there is a significant distinction between the two. Nonetheless both may result in cost and time overruns in the Project but the process of quantifying effect of delay and disruption is quite distinct. More attention is paid to claims regarding delays, still disruption claims can also be substantial.

The Society of Construction Law Delay and Disruption Protocol, 2nd Edition, February 2017 (SCL Protocol), defines Delay as:

“In referring to ‘delay’, the Protocol is concerned with time – work activities taking longer than planned. In large part, the focus is on delay to the completion of the works – in other words, critical delay. Hence, ‘delay’ is concerned with an analysis of time..”

The SCL Protocol defines Disruption as:

“In referring to ‘disruption’, the Protocol is concerned with disturbance, hindrance or interruption to a Contractor’s normal working methods, resulting in lower productivity or efficiency in the execution of particular work activities. If the Contractor is prevented from following what was its reasonable plan at the time of entering into the contract for carrying out the works or a part of them (i.e. it is disrupted), the likelihood is that its resources will accomplish a lower productivity rate than planned on the impacted work activities such that, overall, those work activities will cost more to complete and the Contractor’s profitability will be lower than anticipated”

Delay as defined by the SCL is concerned with time, whereas disruption is concerned with the productivity. Delay may have a direct impact on the contractual date of completion of the Project, depending upon its criticality. The delay caused can be claimed in the form of EOT or LD based on the party responsible for delay (i.e., Employer or the Contractor). While in case of disruption, it may not affect the date of completion directly but still lead to monetary losses. Also, there may be no explicit contractual provision for claiming compensation for a disruption event.

Presenting a Claim of Delay

For instance, delays emanating from an Employer’s risk event were faced on a Project. In order to claim the time and cost owing to such delay, the Contractor would need to demonstrate the following:

> That the delay has genuinely occurred on the

Project and that the Employer is responsible for such delay;

- > That the delay affected the critical path;
- > That the delay qualifies for time and cost as per the conditions stipulated in the Contract;
- > That the Contractor suffered additional expenses which were not envisaged at the time it entered into the Contractual framework with the Employer

The Contractor should maintain detailed and accurate contemporaneous record such as the baseline and updated/impacted/as-built programmes, joint record of delay events, correspondences exchanged between the parties etc. in order to support his Claim. The Contractor should also present a detailed forensic delay analysis to support its claim for Extension of time by demonstrating the extent of critical delays faced on the Project. There are various delay analysis techniques prevailing globally in the Construction sector namely,

- > Impacted As-Planned Analysis;
- > Time Impact Analysis;
- > Time Slice Windows Analysis;
- > As-Planned versus As-Built;
- > Retrospective Longest Path Analysis;
- > Collapsed As-Built Analysis.

The choice of delay analysis to be deployed should be determined by multiple factors such as the governing conditions of the Contract, nature of the causative events, nature of the Project, quality of construction programme and extent of records etc.

For the cost claim pertaining to compensation of time, the Contractor should claim time related indirect expenses at the time critical delays were faced on the Project. Whereas, the Employer’s cost claim generally contains the Liquidated Damages expressly stipulated in the Contract.

Presenting a claim of Disruption

In order to claim disruption in a Project, the Contractor needs to prove that its productivity has suffered due to impediments for instance, non-availability of proper access to reach Project site, Physical conditions encountered at site being different from what was envisaged at the time of bid etc. resulting in

underutilization of its resources resulting in monetary loss. The Contractor needs to prove the following:

- > Disruptive events have occurred, resulting in lower productivity;
- > The events were not envisaged at the time bid was submitted by the Contractor;
- > The events were responsibility of the Employer;
- > The events entitle the Contractor for compensation.

Similar to the case of delay, contemporaneous records should be maintained for claiming disruption. The Contractor here needs to have a legal entitlement to claim for disruption with respect to the events reported by it.

There are various Disruption analysis techniques such as:

- > Productivity-based methods
 - Project specific studies
 - o Measured mile analysis
 - o Earned value analysis
 - o Programme analysis
 - o Work or trade sampling
 - o System dynamics modelling
 - Project comparison studies
 - Industry studies
- > Cost-based methods
 - Estimated vs. incurred labour analysis
 - Estimated vs. used cost analysis

In claiming disruption, the Contractor needs to prove the cost it has incurred would have been lower if not for the disruption i.e., the planned cost was lower than the actual cost incurred on the Project. It is more likely a breach of Contract implying that the Contractor was prevented from carrying out its work according to the Contract and as-planned.

Significance of Distinction

Delay and Disruption both are inherently interrelated but distinct issues. A loss of productivity i.e., disruption can lead to delay and, if the impacted activities are on critical path, that can be critical delay. Similarly, a delay may result into disruption if the Contractor adopt acceleration measures to implement the Project which may lead to tasks being carried out at a lower productivity than planned and at higher costs. Both the issues can have overlapping monetary consequences as well.

The fundamental difference between delay and disruption is that both the claims are needed to be pursued individually as the basis of both the claims is different. The delay and disruption analysis both follow different methodologies. In delay analysis, the focus is on loss of time whereas in case of disruption analysis the focus is on loss of productivity, both resulting in financial damages.

In conclusion, knowing the distinction between delay and disruption will enable you to differentiate your claims in a better way, resulting in a better chance at getting them approved.

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Tom Makokha is an highly experienced Chartered Building Surveyor (FRICS), Expert Witness and Project/Programme Manager.

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He is also accomplished leader of project teams on many varied projects, completing them all on time and within budget, while always achieving the client's objectives.

He is also a mentor experienced in the recruitment, training and stewardship of large professional procurement teams. He is also an RICS accredited Assessor and examines candidates for the RICS assessment of professional competence, in both Building Surveying and Project Management disciplines.

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