



Neutral citation [2012] CAT 25

IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1166/5/7/10

B E T W E E N :

ALBION WATER LIMITED

Claimant

-v-

DŴR CYMRU CYFYNGEDIG

Defendant

ORDER

UPON the Claimant sending to the Tribunal a second witness statement from Dr Jeremy Bryan (the “Second Bryan Statement”) under cover of a letter dated 6 September 2012

AND UPON the Chairman directing by way of a letter dated 13 September 2012 that the Second Bryan Statement be returned to the Claimant

AND UPON the Claimant applying, by way of a letter dated 20 September 2012, for permission to file the Second Bryan Statement (the “Application”)

IT IS ORDERED THAT:

1. The Application be refused.

REASONS

The Order of 23 April 2012 (as amended) set the timetable leading up to the substantive hearing of this case, which is due to start on 15 October and to last for two weeks. That timetable did not give the Claimant permission to file witness evidence in response to the Defendant’s reply witness evidence. Given the late stage these proceedings have reached, it is undesirable to alter the procedural timetable taking account of the likely knock-on effects that such a decision would have. The

Defendant's skeleton argument was due to be filed on 24 September 2012, only two working days after the Application was made, and was no doubt being prepared on the basis that the Second Bryan Statement was not in evidence.

In those circumstances, it seems to me that there would be some prejudice to the Defendant, were the Second Bryan Statement to be admitted in evidence now, less than three weeks before the main hearing begins. The Defendant's indication in its letter of 24 September 2012 that, if the Second Bryan Statement is admitted, it should have the opportunity to adduce evidence increases the concern I have about admitting fresh witness evidence at such a late stage of these already protracted proceedings, absent some exceptional circumstances.

The Claimant has also sought permission for the four documents exhibited to the Second Bryan Statement to remain in the trial bundle, notwithstanding that statement itself is not in evidence. There being no objection from the Defendant to that request, I have given permission.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 25 September 2012
Drawn: 25 September 2012