

In the Matter of an Arbitration

BETWEEN:

**BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1,
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 183, and
MASONRY COUNCIL OF UNIONS TORONTO AND VICINITY**

(THE "UNION")

AND

JASCY GENERAL CONSTRUCTION INC.

(THE "EMPLOYER")

(Grievance Dated August 19, 2020)

BEFORE: Eli A. Gedalof, Sole Arbitrator

HEARING HELD: November 13, 2020

APPEARANCES

For the Union

Maheen Merchant, Associate Counsel
Cesar Rodrigues, Sector Coordinator

For the Employer

No one appearing

AWARD

1. The Union and the Employer are bound by the Masonry Collective Agreement between the Union and the Masonry Contractors' Association of Toronto effective May 1, 2019 to April 30, 2022 (the "Collective Agreement"),

by virtue of a recognition agreement between the parties dated June 17, 2019. The recognition agreement was executed on behalf of the Employer by its principal Valter Soares. On August 19, 2020, the Union filed a grievance against the Employer alleging a breach of the Article 15 subcontracting restrictions under the Collective Agreement. The grievance was duly referred to me for arbitration under the provisions of the Bricklaying Enforcement System. The parties attended a hearing convened by video conference on September 11, 2020. Mr. Soares attended that hearing on behalf of the Employer and did not oppose an order for production of documents sought by the Union at that time. A subsequent hearing date was scheduled by video conference for November 13, 2020. Although duly notified of the hearing, on November 13, 2020, neither Mr. Soares nor any other representative of the Employer attended at the scheduled 10:00 a.m. start time. After waiting until 10:30 a.m., the hearing proceeded in the Employer's absence. It is worth noting that in any event the material facts relied upon by the Union are set out in business records and were not substantially contested by the Employer at the first day of hearing, at which Mr. Soares was present.

2. Having regard to the materials filed by the Union, including the Employer's corporate profile report, the recognition agreement, the Collective Agreement, the grievance, the Notice of Project Start, correspondence between contractors, invoices and records of payment, I find that the Employer breached Article 15.08(a) of the Collective Agreement by performing work as a subcontractor for a masonry contractor which is not bound to the Collective Agreement. In particular, the Employer performed work as a subcontractor to Granitek Masonry Limited commencing on July 6, 2020 at its Gerrard Street East project. In accordance with Article 15.08(c) the Employer "shall pay liquidated damages to the Union in the amount of Two Thousand Dollars (\$2000.00) per calendar day until such time as they satisfy the Union or an Arbitrator that they have ceased to perform such work". On the basis of the materials provided to the Union and before me, the Union was satisfied that the Employer ceased to perform such work on August 25, 2020. Consequently, fifty (50) calendar days elapsed over which liquidated damages accrued in accordance with Article 15.08(c) and the Employer is liable to pay to the Union liquidated damages in the amount of one hundred thousand dollars (\$100,000.00).

3. In accordance with Article 2.02(g), the Employer is also liable to pay damages to the Union equal to the arbitrator's fees, in the amount of \$4,520.00 inclusive of HST.

4. For these reasons the grievance is allowed. Having regard to the arbitrator's powers under Articles 2.02 and 2.03 of Schedule "C" to the Collective Agreement, I declare that the Employer is bound by and has

breached Article 15 of the Collective Agreement and order as follows:

Jascy General Construction Inc. shall pay damages to the Union forthwith in the amount of one hundred and four thousand five hundred and twenty dollars (\$104,520.00).

Dated at Toronto, Ontario, this 13th day of November 2020.



Eli A. Gedalof
Sole Arbitrator