

S AB Order # 7-2001

STATE ARBITRATION BOARD

10780 Anderson Lane
Lake Worth, FL. 33467-5464

Phone (561) 433-4535

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November 17, 2001

Bill Albaugh
Highway Operations
Florida Department of Transportation
605 Suwannee Street MS 31
Tallahassee, FL. 32399-5200

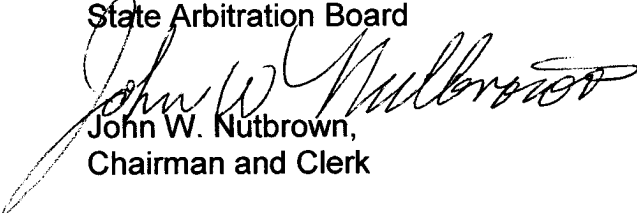
Re Arbitration Order 7-2001
DOT Project No. 11000-3601
Lake County Florida

Dear Bill:

Find enclosed the above captioned Arbitration Order. A copy of the Transcript
Is already in Freddie Simmons office along with the claimant's package for your
review and records.

Sincerely;

State Arbitration Board



John W. Nutbrown,
Chairman and Clerk

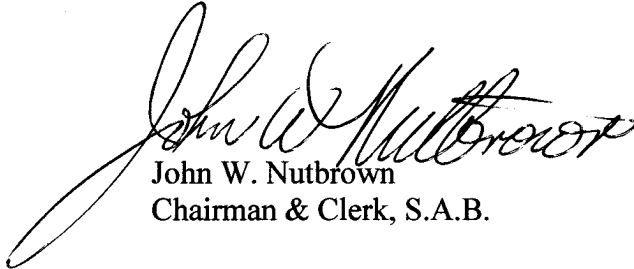
Cc: All Board Members

STATE ARBITRATION BOARD

Order No. 7-2001

/// NOTICE ///

In the case of Haynes & Sons, Inc. versus the Florida Department of Transportation on Project No. 11000-3601 in Lake County, Florida, both parties are advised that the State Arbitration Board Order 7-2001 has been properly filed with The Clerk of the State Arbitration Board on October 25, 2001



John W. Nutbrown
Chairman & Clerk, S.A.B.

S.A.B. CLERK

OCT 27 2001

FILED

Copy of Order & Transcript to:

Bill Albaugh, Highway Operations

Judy Haynes, President Haynes & Sons, Inc.

STATE ARBITRATION BOARD

Order No. 7-2001

RE: Request for Arbitration

Haynes & Sons, Inc.
State Project No. 11000-3601in
Lake County, Florida

The following members of the State Arbitration Board participated:

John W. Nutbrown, Chairman
Freddie Simmons, Board Member
John Norton, Board Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 1:30 PM August 7, 2001

The Contractor, Haynes & Sons, Inc., presented a written request for arbitration of its claim in the total amount of \$ 8,983.80. The claim arises from the nonpayment for 64.17 meters of Pipe Handrail. The Department does not dispute the fact an error occurred in the quantities paid. The Board has considered the written submissions, the testimony given and evidence presented at the hearing on August 7, 2001 and enters this order Number 7-2001.

ORDER

The Board is unanimous in this decision.

STATE ARBITRATION BOARD

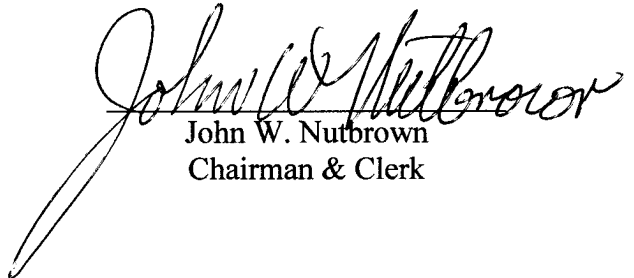
Order No. 7-2001

The Department is ordered to compensate the Contractor in the amount of \$11,338.00 which includes interest at the statutory rate since February 12, 1999.

The Department shall reimburse the State Arbitration Board \$108.90 for court reporting costs.

Lake Worth, Florida

Dated: October 25, 2001



John W. Nutbrown
Chairman & Clerk

Certified copy:

Freddie Simmons, P.E.
Board Member

John W. Nutbrown
Chairman & Clerk

John C. Norton
Board Member

STATE ARBITRATION BOARD
STATE OF FLORIDA

HAYNES & SONS, INC.,)	
)	
)	
)	
)	PROJECT NO. 11000-3601
- and -)	
)	LOCATION: Lake County,
)	Florida
)	
DEPARTMENT OF TRANSPORTATION)	
<hr/>)	

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Tuesday, August 8, 2001

PLACE: Florida Transportation Center
1007 Desoto Park Drive
Tallahassee, Florida

TIME: Commenced at 1:30 p.m.
Concluded at 1:50 p.m.

REPORTED BY: CATHERINE WILKINSON
CSR, CP
Notary Public in and for
the State of Florida at
Large

WILKINSON & ASSOCIATES
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida
(904) 224-0127

CATHERINE WILKINSON & ASSOCIATES (904) 224-0127

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. John W. Nutbrown, Chairman
 Mr. Freddie Simmons
 Mr. John C. Norton

APPEARING ON BEHALF OF HAYNES & SONS, INC.:

Ms. Judy Haynes
 Mr. Curtis Haynes
 Mr. Franklin K. Stapleton

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Steve Wigle
 Mr. Frank O'Dea
 Mr. Edwin Mackiewicz
 Mr. Tim Bauer
 Ms. Rochelle Will

* * *

I N D E X

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P R O C E E D I N G S

CHAIRMAN NUTBROWN: This is a hearing of the State Arbitration Board, established in accordance with Section 337.185 of the Florida Statutes.

Mr. Freddie Simmons was appointed as a member of the Board by the Secretary of the Department of Transportation.

Mr. Jack Norton was elected by the construction companies under contract with the Department of Transportation.

These two members have chosen me, John Nutbrown, to serve as the third member of the Board and as Chairman. Our terms expire June 30, 2004.

Will each person who is going to make any oral presentations during this hearing please raise your right hand and be sworn in.

(Whereupon, all witnesses were duly sworn.)

CHAIRMAN NUTBROWN: The request for the arbitration of a claim submitted by the claimant, including all attachments thereto and the administrative documents received before this hearing, are hereby identified as Exhibit No. 1.

Exhibit No. 2 is a list of calculations on the grass areas done by an independent third party. I'm going to make that Exhibit 2. Steve, there's a copy.

1 I don't have one for everybody. There may be more than
2 is needed.

3 The reason for that, when Ms. Haynes -- this is
4 on the Volusia job, I'm sorry, and not the other one.
5 The first job we are going to hear will be -- and I'm
6 getting a little ahead of course.

7 (Whereupon, Exhibit Nos. 1 and 2 were received in
8 evidence.)

9 CHAIRMAN NUTBROWN: The first job we will hear
10 will be State Project 11000-3601, Lake County, Florida,
11 Minneola Bypass.

12 I don't think we have any other information or
13 parcels that need to be distributed. We will come back
14 to the other one. I apologize for that. I'm still new
15 and learning.

16 During the hearing, the parties may offer such
17 evidence and testimony as is pertinent and material to
18 the dispute being considered by the Board, and shall
19 produce such additional evidence as the Board may deem
20 necessary to an understanding of the matter before it.

21 The Board shall be the sole judge of the
22 relevance and the materiality of the evidence offered.

23 The parties are instructed to ensure that they
24 receive properly identified copies of each exhibit used
25 during the proceeding. You should retain these

1 exhibits. The Board will send the parties a copy of
2 the court reporter's transcript along with our order,
3 but will not furnish copies of the exhibits.

4 As is typical in arbitration proceedings, this
5 hearing will be conducted in an informal manner.

6 The Board is not required to apply a legalistic
7 approach or strictly apply the rules of evidence under
8 civil and court proceedings. We are primarily looking
9 for information in regard to the facts and the contract
10 provisions that apply to this case.

11 The order of proceedings will be for the claimant
12 to make his presentation of their claim and then for
13 the respondents to offer rebuttal.

14 Either party may interrupt to bring out a
15 pertinent point by coming through the Chairman. I will
16 get to that in a second.

17 We are going to try to keep this thing as
18 orderly as possible. We have a very small group today.
19 Ms. Wilkinson here only has two hands, two ears and a
20 pair of eyes, and if everybody talks at once, we are
21 going to lose something.

22 So I would appreciate it if you have a point you
23 want to make, raise your hand, and I will recognize
24 you. She can only listen to one person at a time.
25 Looks like we have a fairly amiable group today, so we

1 shouldn't have a problem.

2 Okay, with that, Ms. Haynes, do you want to go
3 ahead with your presentation as far as the matter of
4 the Lake County bicycle path.

5 MS. HAYNES: Haynes and Sons was the prime
6 contractor on the Lake County Minneola bike trail in
7 Clermont, Florida. We subcontracted to Cornerstone
8 Businesses to install the handrail on that project.
9 There seems to be a discrepancy in the measurement of
10 the handrail.

11 Cornerstone Businesses did send me an invoice for
12 233.47, I believe, as a measurement.

13 I talked with Tony Walters, who was the inspector
14 on the project, several times regarding the
15 discrepancy. I indicated to him that Cornerstone was
16 billing me for more handrail than what was being paid
17 on the estimates. Tony assured me that their
18 measurements were correct.

19 On several occasions I talked to Ken Wensbro,
20 told him that Tony had assured me that the measurements
21 were correct.

22 We received an offer of final payment on the
23 project. I signed the regular acceptance letter,
24 sending it back to the Department.

25 At some point later I received another letter

1 from Ken Wensbro at Cornerstone stating that he still
2 believed his measurements to be correct. At that time
3 I placed another call to Tony Walters to talk with him
4 about it.

5 At that time he told me that he knew that the
6 Department had made an error in the measurement. Up
7 until that time he had insisted that their measurements
8 were correct.

9 I then wrote a letter to Mr. Wensbro telling him
10 that the Department had admitted that they had made an
11 error in their measurement.

12 I asked the Department to consider opening the
13 file and paying us for the handrail so that I could pay
14 the subcontractor. Our request was denied.

15 I believe I again sent a letter requesting them
16 to pay, and they again denied it. That's when we filed
17 the claim.

18 CHAIRMAN NUTBROWN: Do you have anything else?
19 Anybody else want to make a comment from that side?
20 Steve, do you want to make your presentation?

21 MR. WIGLE: We don't dispute the quantity is
22 wrong. We do dispute that notification was provided at
23 the time of the finishing. The Department was not
24 aware of a quantity problem for several months after
25 final payment was made.

1 I don't think we should open up contracts that
2 have been -- where final payment has been accepted.
3 Contractors have an obligation to square everything up
4 with their subs before they submit a regular acceptance
5 letter.

6 If there was a quantity dispute going on between
7 the sub and the prime, then we were not aware of it
8 until -- you can see in my letter, the first verbal
9 notification was on May 16, which was -- of 2000. The
10 regular acceptance letter for Haynes and Sons was
11 received July 19, 1999. That's 11 months after we
12 received the regular acceptance letter we were notified
13 of the quantity dispute.

14 We just don't feel -- we have a release signed
15 basically with that regular acceptance letter. We
16 don't want to open up old jobs every time there's a
17 quantity dispute.

18 They've got an obligation to square everything
19 up with their subs before signing that letter of
20 acceptance. They have the opportunity to do a
21 qualified acceptance letter if there is a quantity
22 dispute, which they didn't do.

23 MS. HAYNES: Mr. Chairman, let me --

24 CHAIRMAN NUTBROWN: Let me make one comment.

25 I have a question. Do you agree with the quantity that

1 Cornerstone has put forth of 233 something meters or
2 something like that?

3 MR. WIGLE: Yes.

4 CHAIRMAN NUTBROWN: You agree with that quantity.
5 Okay. Ms. Haynes?

6 MS. HAYNES: I believe we requested that
7 Tony Walters be at this meeting, but he is not here.
8 I did speak with him on several occasions before the
9 first written notification or verbal notification that
10 Ken Wensbro had called Tony. I had spoken with Tony on
11 several occasions on the phone.

12 I'm sorry to say that I can't document the days
13 like the Department has done here, but I do see that
14 there is no documentation of the phone calls that he
15 received from me previous to this time.

16 MR. WIGLE: In the package I submitted this is
17 copies of Tony's notebook, documenting.

18 MS. HAYNES: Well, Tony -- excuse me.

19 CHAIRMAN NUTBROWN: Go ahead.

20 MS. HAYNES: Tony also measured the handrail.

21 CHAIRMAN NUTBROWN: Curtis, you had a comment?

22 MR. HAYNES: Yes, I would be curious to know how
23 the State determined that the measurements were wrong.
24 We had the right measurements. They were in a state of
25 denial for a period of time. Now they are agreeing the

1 measurements are right.

2 At what point in here did they determine that the
3 measurements that Cornerstone had measured and were
4 asking for were correct? At some point they were in a
5 state of denial. Now they are coming together and
6 saying now that we got you to sign a letter of
7 acceptance, you know, you are right about that.

8 MR. WIGLE: No, sir.

9 CHAIRMAN NUTBROWN: Steve?

10 MR. WIGLE: There is a note in here from Tony
11 that says, "These are copies of my phone logs. 5-15 is
12 the first time that Mike Carver called me about the
13 shortage."

14 There was no notification. I would think if
15 there was a problem with the quantities they would have
16 done a qualified acceptance letter, and that didn't
17 happen.

18 We are not in the business of shortchanging
19 people intentionally.

20 MS. HAYNES: Mr. Chairman, there's one thing that
21 I would like to add to this. I notice that in either
22 Mr. Wigle's letter or Mr. Perry's letter -- I believe
23 it's in Mr. Wigle's letter, he states that he would
24 not -- if the Department had overpaid us, that they
25 would not be requesting the money be returned.

1 Well, that, in fact, is not a true statement
2 because I was overpaid on a project that we did in
3 Duval County \$2,000. I received a letter from the
4 Department stating that they had overpaid me on this
5 project, and if they did not receive a check within so
6 many days -- and I think it was like ten days, that we
7 would be taken off the bidders' list.

8 His statement about not asking for the money back
9 is not a true statement.

10 CHAIRMAN NUTBROWN: I don't want to get into
11 that. Freddie?

12 MR. SIMMONS: There is a letter in here from
13 Cornerstone. It's dated May 29. It says in there that
14 the pipe handrail that we furnished and installed
15 totals the 233.47 linear meters as shown on our invoice
16 number 814 dated March 31 of '99.

17 That invoice date is prior to these other dates
18 in Steve's letter, but it says in the quantities shown
19 on the final estimate issued by DOT on July 2, '99, it
20 says 169.

21 What happened, whenever they invoiced you all
22 with the 233.47, what happened between that and the --
23 between March and July that that quantity was reduced
24 to 169?

25 MS. HAYNES: Because the Department never paid

1 the 233.

2 MR. SIMMONS: Did you submit the 233 to the
3 Department when you were invoiced?

4 MS. HAYNES: We don't do submittals to the
5 Department.

6 MR. SIMMONS: Did the subs submit the invoice to
7 you all directly?

8 MR. WIGLE: No, not until well after final
9 payment.

10 MS. HAYNES: The Department's inspectors measure
11 the quantities on the project. It's paid on a monthly
12 estimate.

13 MR. SIMMONS: Okay, but the --

14 MS. HAYNES: Sometimes what we get paid by the
15 Department is not what is done on the project.

16 MR. SIMMONS: The 233.47 was -- they sent an
17 invoice to you all saying that's how much we put in?

18 MS. HAYNES: Yes.

19 MR. SIMMONS: I assume we would have measured it
20 shortly after they finished?

21 MR. WIGLE: Yes.

22 MR. SIMMONS: So we would have known it would
23 have been that quantity at that time, wouldn't we? Do
24 we have a log or something?

25 MR. WIGLE: There was a mistake made in the

1 measurements.

2 MR. SIMMONS: When we measured it the first time?

3 MR. WIGLE: Yes. We paid for 160 something
4 meters, and that was a mistake.

5 CHAIRMAN NUTBROWN: Steve, wasn't this material
6 attached to a safety wall?

7 MR. WIGLE: Yes.

8 CHAIRMAN NUTBROWN: The safety wall was by the
9 cubic yard or by lineal meter or lineal foot, or do you
10 know offhand?

11 MR. WIGLE: I don't know. I don't have those
12 sheets.

13 CHAIRMAN NUTBROWN: By the meter?

14 MR. HAYNES: Cubic meter.

15 CHAIRMAN NUTBROWN: Cubic meter. That wouldn't
16 be a lineal measurement then.

17 MR. WIGLE: There was a mistake made in the
18 measurement. It was paid that way. They were getting
19 invoices from Cornerstone. Cornerstone wasn't
20 notifying us of an error. We didn't find out about the
21 error until well after final payment was made.

22 MR. NORTON: Doesn't the final payment estimate,
23 when you get it, don't you have to have a release of
24 lien from all the subcontractors?

25 MR. WIGLE: No.

1 MR. NORTON: You do not. Okay.

2 CHAIRMAN NUTBROWN: You have to have a release
3 from the bonding company and that's all?

4 MR. WIGLE: Yes, bonding company and the prime.
5 Basically that's the letter of acceptance.

6 CHAIRMAN NUTBROWN: Okay.

7 MR. WIGLE: We get certification of disbursement
8 of previous periodic payments from the prime contractor
9 that all the subs have been paid, previous estimates.

10 MS. HAYNES: I was going to say, all our subs had
11 been paid what the Department had paid us -- their pro
12 rata share of what the Department had paid us.

13 My question is if it's the obligation of the
14 contractor to be sure his subcontractors are paid, why
15 is it not an obligation of the Department to be sure
16 the prime contractor is paid?

17 And you admit that a mistake was made. You
18 apparently did some measurements after the qualified
19 acceptance letter was sent in. So you actually opened
20 the file again to do those measurements, but you are
21 not willing to open the file to pay us.

22 CHAIRMAN NUTBROWN: Steve, do you have anything
23 else on that?

24 MR. WIGLE: No, sir.

25 CHAIRMAN NUTBROWN: Curtis?

1 MR. HAYNES: Unless, of course, they knew these
2 measurements were wrong before the qualified acceptance
3 letter was sent in.

4 MR. WIGLE: I take offense. We are not in the
5 business of doing that.

6 MR. HAYNES: I would like to think you could get
7 in the business of paying us what we are owed, since
8 the measurements are wrong. That's obvious, and we did
9 the work.

10 CHAIRMAN NUTBROWN: I don't think we are here to
11 get ugly with each other. We are here to settle the
12 matter.

13 Ms. Haynes, do you have any other comments to go
14 with your presentation?

15 MS. HAYNES: No.

16 CHAIRMAN NUTBROWN: Mr. Wigle, do you have any
17 other comments to go with your presentation?

18 MR. WIGLE: No, sir.

19 CHAIRMAN NUTBROWN: Mr. Simmons?

20 MR. SIMMONS: No.

21 CHAIRMAN NUTBROWN: Mr. Norton?

22 MR. NORTON: No.

23 CHAIRMAN NUTBROWN: This hearing is hereby
24 closed. The Board will meet and deliberate on this
25 claim in approximately six weeks, and the parties will

1 be furnished with our order. Both the Department and
2 the contractor will receive a copy of the transcript of
3 the hearing at that time.

4 (Whereupon, the hearing was concluded at 1:50 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, CATHERINE WILKINSON, Court Reporter, do hereby
certify that I was authorized to and did stenographically
report the foregoing proceedings; and that the transcript is
a true record of the testimony given.

I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor am I a
relative or employee of any of the parties' attorney or
counsel in connection with the action, nor am I financially
interested in the action.

Dated this 14th day of August, 2001.



CATHERINE WILKINSON

CSR, CP

Post Office Box 13461

Tallahassee, Florida 32317