Report on a Case by the Board of Ethical Review

Case Number 59-2

Subject:
Termination of Engineer's Services and Retention of Different Engineer for Same Work

Facts:
Engineer "A" had been retained by an Owner for certain engineering services under written agreement. Prior to the completion of his work, "A" was notified by the Owner that his services were being terminated. Subsequently, Engineer "B" was retained by the Owner for the same work. Engineer "B" was notified by Engineer "A" that the termination of his service was by unilateral action of the Owner and was not "accepted" by Engineer "A."

Question:
Was it ethical conduct on "B's" part to accept the contract in view of the unilateral termination of "A's" services without his consent, and over his objection?

References:
Canons of Ethics, Section 23- "He will not directly or indirectly injure the professional . . . prospects or practice of another engineer. * * *"

Section 25-".He will not try to supplant another engineer in a particular employment after becoming aware that definite steps have 'been taken toward the other's employment."

Rules of Professional Conduct, Rule 46-"He will not attempt to inject his services into a project at the expense of another engineer who has been active in developing k."

Discussion:
Aside from any contractual obligations which may remain between the Owner and engineer "A" which may be settled by mutual agreement or recourse to legal proceedings, it is beyond doubt that the Owner has a right to terminate the services of the Engineer at his pleasure. Section 8 of the Canons makes it clear that the Engineer acts as an agent or trustee for the Owner, and, as such, serves at the sole discretion of the Owner. Even should *he Owner's decision be based on whim, caprice and other unsound motivation, it does not alter his right to have the Engineer of his choice for the work. It is equally clear, of course, that the Engineer is entitled to proper compensation for the work he performed. In the absence of any showing that Engineer "B" had any part whatsoever in the Owner's decision to terminate the services of Engineer "A" in order to secure the assignment for himself, or for other motives, there is no violation of ethical principles in his acceptance of the same work. To hold otherwise would amount to stating that the Owner would not be allowed to secure competent engineering services if he became dissatisfied with the services of the Engineer originally selected for the work.

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Conclusion:
Engineer "B" may ethically accept and perform the work for the Owner, subject to the assumption that he was in no degree responsible for or a party to the Owner's decision to terminate Engineer "A's" services.

Approved by the following members of the Board of Ethical Review at their meeting in Washington, D. C., December 10, 1959. L. R. DURKEE, P. E. PHIL T. ELLIOTT, P. E. PIERCE G. ELLIS, P. E. EZRA K. NICHOLSON, P. E. MURRAY A. WILSON, P. E., Chairman.

Dissenting Opinion:
The majority opinion is as follows: "Engineer 'B' may ethically accept and perform the work for the Owner, subject to the assumption that he was in no degree responsible for, or a party to, the Owner's decision to terminate Engineer 'A's' services."

Section 8 of the Canons referred to in the discussion of the majority opinion is as follows: "The engineer will act in professional matters for each client or employer as a faithful agent or trustee."

The case was submitted to the Board of Ethical Review as a hypothetical situation. It is agreed that this is the proper procedure. It is pertinent here, however, to point out that the case as submitted to the Board grew out of an actual situation and set of circumstances. Engineer "A" in the actual case stated that other engineers declined the employment which "B" accepted.

The majority apparently based its conclusion upon two prime considerations, to wit: (1) the contract with Engineer "A" had been terminated by the Owner, and (2) Engineer "B" was in no way responsible for or a party to the Owner's decision to terminate Engineer "A's" services.

The majority in its discussion says "Even should the Owner's decision be based on whim, caprice and other unsound motivation, it does not alter his right to have the Engineer of his choice for the work." A transaction involving professional services may be entirely legal and at the same time it can be unethical for a professional engineer to be a party to the transaction. It was not enough for Engineer "B" to have satisfied himself that the Owner had terminated the contract. As a professional engineer, "B" should have ascertained the circumstances surrounding the dismissal of Engineer "A." If in fact the contract was terminated by the Owner based on whim, caprice or other unsound motivation, Engineer "B" was on "swampy ethical ground" in accepting the assignment. It could reasonably be assumed that the other engineers who declined the employment in the actual case made such an investigation.

There is no showing of any kind that Engineer "A" failed to act in any way other than as a "faithful agent or trustee." (Canons, Section 8)

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This is an important case but it has been oversimplified in the Statement of Facts. The majority apparently considered the contract as a routine business transaction. This is true as to legal considerations, but being a contract for professional services other professional engineers must consider its ethical aspects when terminated without just cause by the Owner.

If the Owner terminated the contract from unjust causes such as whim, caprice, unsound motivation, dishonest purposes, etc., then Engineer "B" in accepting employment clearly violated Section 23 of the Canons of Ethics.

Conclusion:
From the facts as submitted Engineer "B" could have acted either ethically or unethically depending upon the assumptions made in the conclusions. The facts should preclude the necessity of any assumption in the Board's conclusion. The case should be returned to the staff for amplification of the facts and then resubmitted to the Board.

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