

Misunderstanding in Claim Management

A European consortium selling customized investment goods to China assessed claims as a potential source of conflict. Hence, the consortium agreed internally on a 'zero-claim-policy' in order to maintain harmony with the Chinese customer. The purpose was to secure follow-up orders. The consortium did not communicate this policy to their Chinese customer as they thought it would be a basic assumption by the Chinese. However, the Chinese customer was mainly interested in getting access to innovative technology and not in purchasing more investment goods. In order to pursue his interest, the Chinese customer issued claims against the consortium after the product had been delivered and handed over to the Chinese side. The consortium was accused of having withheld technology from the Chinese. According to the Chinese interpretation of the contract, the technology in question should have been transferred to China. The consortium was shocked at this approach because they had assumed reciprocation on the 'zero-claim-policy'. When they were confronted with claims from the customer's side, they realized that they had made a mistake. They did not have any leverage against the customer by lodging their own claims because they had unilaterally abstained from forwarding their (numerous) claims during the course of the project.

A study (Chen and Partington, 2004) comparing Chinese and UK project managers in the construction industry has revealed different attitudes to claims and contract penalties. For the Chinese, negotiation was the only way to resolve a conflict between the customer and the contractor. Claims were considered as something extreme resulting in a loss of 'face'. The UK managers had a more impersonal attitude. While they preferred negotiations, they saw claims and contractual penalties as normal management practice. Probably, the Western consortium had in mind what the study above revealed. But what went wrong?

1. *How do you explain the contradiction between the study and the behavior of the Chinese customer? (10 Marks)*
2. *What types of contract breach do you see here? Why?(2 x 15 Marks)*
3. *What type of remedies would you propose? Why? (2x15 Marks)*
4. *What type of dispute resolution methods would you pursue for the selected remedies? Why?(2x15 Marks)*