

ASBCA No. 42982

ASBCA

Appeal of
Freightliner
Corporation

Under Contract No. DAAE07-85-C-J010

February 9, 1994

APPEARANCE(S) FOR THE APPELLANT:

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APPEARANCE(S) FOR THE GOVERNMENT:

COL Riggs L. Wilks, Jr., JA

Chief Trial Attorney

LTC Thomas O. Mason, JA

MAJ Rodney A. Grandon, JA

Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE THOMAS ON MOTION WITH RESPECT TO 28 U.S.C. § 1292(b)

On 26 November 1993, the Board denied appellant's motion for summary judgment on count two of its complaint. On 30 December 1993, appellant filed "APPELLANT'S MOTION TO SUPPLEMENT THE BOARD'S OPINION AND DECISION AND FOR A STAY OF THE PROCEEDINGS." Appellant asked the Board to certify its decision for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) and to stay further proceedings until resolution of appellant's application for an appeal. The Government opposes the motion.

We deny appellant's motion because 28 U.S.C. § 1292(b) by its terms is applicable to the district courts, not the boards of contract appeals, and we know of no other authority for our certifying an interlocutory appeal. Cf. Carlin-Atlas, GSBICA No. 6567, 83-2 BCA ¶ 16,857; Sterling Federal Systems, Inc. v. Administrator, No. 92-1552, slip op. at 9 (Fed. Cir. January 28, 1994) (GSBICA not a court as referred to in 28 U.S.C. § 451). Accordingly, there is no need to stay the appeal.

EUNICE W. THOMAS

Administrative Judge

Armed Services Board of Contract Appeals

I concur

JOHN J. GROSSBAUM

Administrative Judge

Armed Services Board of Contract Appeals

I concur

PETER D. TING

Administrative Judge

Armed Services Board of Contract Appeals

I concur

WILLIAM J. RUBERRY

Administrative Judge

Acting Chairman, Armed Services

Board of Contract Appeals

I concur

ALAN M. SPECTOR

Administrative Judge

Vice Chairman, Armed Services

Board of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 42982, Appeal of Freightliner Corporation, rendered in conformance with the Board's Charter.

EDWARD S. ADAMKEWICZ

Recorder, Armed Services

Board of Contract Appeals