

DOCKET NO. 173

NUMBER	TERM	YEAR
<u>276</u>	<u>November</u>	<u>1960</u>

Von B. Johnson

VERSUS

Pennsylvania Electric Company

VON B. JOHNSON

113
VERSUS
PENNSYLVANIA ELECTRIC COMPANY

IN THE COURT OF COMMON PLEAS
OF THE COUNTY OF CLEARFIELD, PA.

No. 276 NOVEMBER TERM Term, 19 60

VERDICT

And now to wit: *January 31st 1960*, we, the Jurors
empanelled in the above entitled case, find A Verdict in Favor

*Von B. Johnson in the amount
of \$200.00 damage suffered in the loss of
the contract with Pennsylvania Electric Co.*

James B. Penley
Foreman

No. 276 November Term, 1960

VON B. JOHNSON

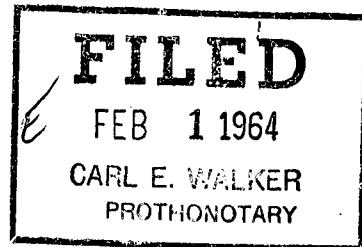
VERSUS

PENNSYLVANIA ELECTRIC COMPANY

VERDICT

Filed 19

Prothonotary



DATE: JANUARY 28, 1964

NO. 276

TERM: November

YEAR: 1960

PLAINTIFF: Von. B. Johnson

VS.

DEFENDANT: Pennsylvania Electric Co.

JURY CALLED AND SWORN: 1:10 P.M.

JURORS:

1. Minnie Test
2. James B. Rounseley
3. Betty Bigney
4. Burtice Wilson
5. James Kaufman
6. Gilbert Beck

7. Ruth Snyder
8. Joseph Stasko
9. Pauline Amon
10. Leslie Davis
11. Evelyn Boyle
12. J. B. Straw

PLAINTIFF WITNESSES:

Frances Koskie
Von B. Johnson
Don R. Johnson

DEFENDANT WITNESSES:

J. J. Gumbrough
C. E. Ditty
Chettie Smith
George Scott
Paul Vipond

PLAINTIFF'S ATTY. Richard Sharpe

DEFT. ATTY. R.V. MAINE
Davis + Nevling

ADDRESS TO JURY: 11:54 A.M.

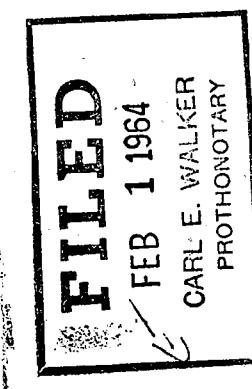
ADDRESS TO JURY: 11:30 A.M.

JUDGE: ADDRESS TO JURY: 1:30 P.M.

JURY OUT: 2:30 P.M. JURY RETURN: 5:10 P.M.

VERDICT:

Von. B. Johnson to receive \$200.00 Damage from
Pennsylvania Electric Co.



IN THE COURT OF COMMONPLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON,)
Plaintiff)
vs.) No. 276 November Term, 1960
PENNSYLVANIA ELECTRIC COMPANY,) IN ASSUMPSIT
Defendant)

MOTION TO AMEND

AND NOW, to wit, this 27th day of January, 1964, the plaintiff, by his attorney, moves the Court to permit amendment of the Complaint in the above captioned case to read as follows:

6. Pond no. 1, subject of the above mentioned contract, *on August 18, 1960* contained a total of 66,175 cubic yards of ash ~~prior to the time defendant breached the contract by ordering plaintiff to discontinue~~. The plaintiff had removed a total of 23,956 cubic yards of ash according to calculation by defendant's engineers and a total of 24,959 cubic yards of ash according to calculations by plaintiff's engineer.

8. Defendant, by preventing the plaintiff from removing 17,792 cubic yards of ash, which was the volume removed by plaintiff's successor, caused plaintiff to suffer a loss as follows:

(a) If the volume of ash actually removed by plaintiff was 23,956 cubic yards, plaintiff's actual cost of removal per cubic yard was 34¢, resulting in a net profit per cubic yard of 44¢, multiplied by 17,792 cubic yards, resulting in a net loss of profit of \$7828.48.

(b) If the volume of ash actually removed by plaintiff was 24,959 cubic yards, plaintiff's actual cost of removal per cubic yard would be 32¢, resulting in a net profit per cubic yard of

46¢, multiplied by 17,792 cubic yards, resulting in a net loss of profit of \$8184.32. In addition, defendant would be indebted to plaintiff for 1003 additional cubic yards times the contract price, or a net amount of \$782.34, resulting in a total net loss of profit to the plaintiff of \$8966.66.

WHEREFORE, judgment is asked in the sum of either \$7828.48 or \$8966.66.

SHARP & GILPATRICK

By Ronald M. Sharp

MILLER, KISTLER & LEE

By Donald E. Lee

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

No. 276 November Term, 1960

IN ASSUMPSIT

VON B. JOHNSON,
Plaintiff

vs.

PENNSYLVANIA ELECTRIC
COMPANY,
Defendant

MOTION TO AMEND

SHARP & GILPATRICK

ATTORNEYS AT LAW
20 N. SECOND ST.
PHILIPSBURG, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON, Plaintiff :
vs. : No. 276 November Term, 1960
PENNSYLVANIA ELECTRIC COMPANY, Defendant : IN ASSUMPSIT

DEFENDANT'S POINTS FOR CHARGE

AND NOW, January 31, 1964, the learned Trial Judge is respectfully requested on behalf of the defendant to instruct the jury as follows:

1. The plaintiff, Von B. Johnson, has the burden of proving the terms of his contract with the defendant, Pennsylvania Electric Company; that he was able and ready to perform that contract by emptying the No. 1 pond on or before December 10, 1960; that the defendant unlawfully broke the contract; and that the plaintiff, Von B. Johnson, suffered damages from the breach.

2. If the jury believes that the evidence given by the plaintiff, Von B. Johnson, is so uncertain, contradictory and ambiguous as to make findings from the evidence a mere conjecture, its verdict must be for the defendant, Pennsylvania Electric Company.

3. The plaintiff, Von B. Johnson, must prove by a preponderance of the evidence that he was able and ready to remove all the ash from the No. 1 pond on or before December 10, 1960; and if the jury finds from the evidence that the plaintiff, Von B. Johnson, was not able and ready to remove all the ash from the No. 1 pond on or before December 10, 1960, its verdict must be for the defendant, Pennsylvania Electric Company.

4. If the plaintiff, Von B. Johnson, was apparently unable, at the time the contract was terminated on October 27, 1960, to empty the No. 1 pond on or before December 10, 1960, the defendant, Pennsylvania Electric Company, was justified in terminating the contract and your verdict must be for the defendant, Pennsylvania Electric Company.

5. If the jury finds from the evidence that the plaintiff, Von B. Johnson, stated during the time he was working at Shawville to the representatives of Pennsylvania Electric Company that he did not know how to empty the No. 1 pond on or before December 10, 1960, the defendant was justified in terminating the contract and your verdict must be for the defendant, Pennsylvania Electric Company.

6. If the jury finds from the evidence that the plaintiff, Von B. Johnson, was unable to perform his contract by emptying the No. 1 pond on or before December 10, 1960, it must find a verdict for the defendant, Pennsylvania Electric Company, under its counterclaim, for the amount of damage defendant, Pennsylvania Electric Company, may have suffered.

7. The plaintiff, Von B. Johnson, seeks to recover damages for a loss of anticipated profits and in such a case he must prove his loss of anticipated profits with reasonable certainty and not by evidence that is conjectural or speculative.

8. The defendant, Pennsylvania Electric Company, being a public utility, is required by law to furnish adequate and efficient electrical service to the public

without unreasonable interruptions and delay.

9. In order to recover damage for a loss of anticipated profits the plaintiff, Von B. Johnson, must show that a breach of contract by the defendant caused his loss, and if the jury finds from the evidence that Von B. Johnson's own inability prevented him from emptying the No. 1 pond on or before December 10, 1960, it must find for the defendant; Pennsylvania Electric Company.

10. Under all the evidence and the law, your verdict on the claim of Von B. Johnson, the plaintiff, shall be for the defendant, Pennsylvania Electric Company.

Respectfully submitted,

Robert V. Mann
James E. Neelis

Attorneys for Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 276 November Term, 1960
IN ASSUMPSIT

VON B. JOHNSON, Plaintiff

vs.

PENNSYLVANIA ELECTRIC
COMPANY,
Defendant

DEFENDANT'S
POINTS FOR CHARGE

NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

VON B. JOHNSON, PLAINTIFF) In the Court of Clearfield County,
VS) Pennsylvania
PENNSYLVANIA ELECTRIC COMPANY,) No. 276 November Term, 1960
DEFENDANT) In Assumpsit

POINTS FOR CHARGE

Plaintiff, Von B. Johnson, by his attorneys, request the court to accept the following points for charge:

1. If the Defendant, Pennsylvania Electric Company cancelled the Plaintiff's contract without a reasonable belief that performance of the contract, to empty the pond by December 10, 1960, by the Plaintiff became impossible or apparently impossible, the plaintiff is entitled to a verdict.
2. If the testimony and evidence reveals that the Defendant, Pennsylvania Electric Company, made performance of the contract by the Plaintiff impossible, because of the necessity of utilizing the No. One Pond at Shawville, prior to December 10, 1960, the completion date of the contract, the Plaintiff is entitled to a verdict.
3. The duty of the ^{Plaintiff} Defendant, in the calculation of damages is to set forth with reasonable certainty such damages and there is no requirement of mathematical accuracy so long as the damages do not become conjectural or speculative.
4. Overhead expenses which are constant in character and which would not have been effected by the performance of the contract, should not be included as cost items in determining damages.
5. The weight of testimony and evidence entitles the Plaintiff to a verdict.

MILLER, KISTLER & FEE, ESQS.
BY: Donald E. Fee

SHARP AND GILPATRICK, ESQS.
BY: Richard L. Sharp
Attorneys for Plaintiff

In the Court of Clearfield
County, Pa.
No. 276 November Term, 1960
In Assumpsit

VON B. JOHNSON, PLAINTIFF

VS

PENNSYLVANIA ELECTRIC
COMPANY, DEFENDANT

POINTS FOR CHARGE

LAW OFFICES OF
MILLER, KISTLER & LEE
BELLEFONTE, PENNSYLVANIA
CRIDE'S EXCHANGE BUILDING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON,
Plaintiff

Vs.

PENNSYLVANIA ELECTRIC
COMPANY,
Defendant

No. ___, February Term, 1961

PRAECIPE FOR SUMMONS IN ASSUMPSIT

TO THE PROTHONOTARY OF THE SAID COURT:

Issue a Summons in Assumpsit in the above captioned
matter.

MILLER AND KISTLER

By John R. Miller
Attorneys for Plaintiff

Richard M. Sharp
Richard M. Sharp,
Attorney for Plaintiff

December 14, 1960.

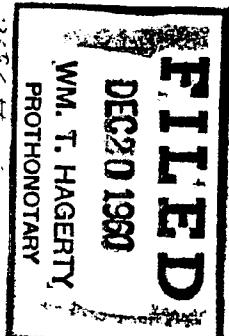
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENN-
SYLVANIA 1960
No. 276, February Term, 1960

VON B. JOHNSON,
Plaintiff

vs.

PENNSYLVANIA ELECTRIC
COMPANY,
Defendant

PRAECIPE FOR SUMMONS IN
ASSUMPSIT



WM. T. HAGERTY
RICHARD M. SHARP
ATTORNEY AT LAW
20 N. SECOND ST.
PHILIPSBURG, PENNSYLVANIA

Affidavit of Service

Von B. Johnson

No. 276 November Term, 19 60

Summons

vs.

Pennsylvania Electric Company

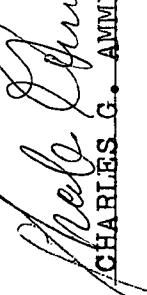
Returnable within _____ days
from date of service hereof.

NOW December 21, 1960 at 11:30 o'clock A.M.
served the within Summons
on Pennsylvania Electric Company
at place of business, 101 S Third St., Clearfield, Pennsylvania.

by J. W. Lindstrom, Office Manager
a true and attested copy of the original Summons
known to him the contents thereof. Costs, Sheriff Amerman \$7.00
(Paid)

Sworn to before me this 22nd
day of December A. D. 19 60

So answers,


CHARLES G. AMERMAN

Sheriff


CHARLES G. AMERMAN
Prothonotary

SUMMONS

Commonwealth of Pennsylvania
County of Clearfield

To: PENNSYLVANIA ELECTRIC COMPANY

You are notified that VON B. JOHNSON

the plaintiff, has commenced an action in SUMMONS IN ASSUMPSIT
against you which you are
required to defend:

Date December 20, 1960

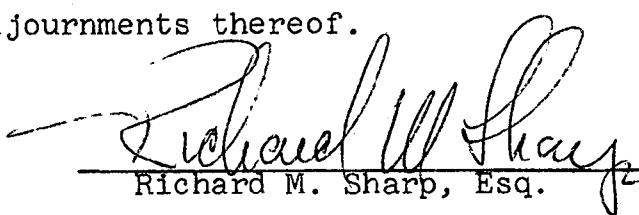
John J. Doherty
By Notary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.

VON B. JOHNSON, Plaintiff }
vs. } No. 276 November Term, 1960
PENNSYLVANIA ELECTRIC COMPANY, Defendant } IN ASSUMPSIT

NOTICE ON TAKING DEPOSITION
ON ORAL EXAMINATION UNDER
Pa. R.C.P. No. 4007(c)

Notice is hereby given herewith that, pursuant to Pa. R.C.P. No. 4007, the deposition of the engineer of Defendant, whose name is unknown to Plaintiff, or such employees of Defendant who have knowledge of the total number of cubic yards of ash removed from the settling basin, known as Pit #1, located near Defendant's generating plant at Shawville, Clearfield County, Pennsylvania, will be taken on oral examination at the Court House, Clearfield, Pennsylvania, on Saturday, February 4, 1961, at 10:00 o'clock A.M., and at any and all adjournments thereof.


Richard M. Sharp, Esq.

MILLER, KISTLER & LEE

January 17, 1961

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 276 November Term, 1960

IN ASSUMPSIT

VON B. JOHNSON, Plaintiff

vs.

PENNSYLVANIA ELECTRIC
COMPANY, Defendant

NOTICE OF TAKING DEPOSITION

FILED

JAN 23 1961

WM. T. HAGERTY
PROTHONOTARY

MILLER, KISTLER & LEE

RICHARD M. SHARP
ATTORNEY AT LAW
20 N. SECOND ST.
PHILIPSBURG, PENNSYLVANIA

for info cont'd
complaint bingman v
bingman v common
he probate court
1961, Jan 23, bingman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON, Plaintiff :
vs. : No. 276 November Term 1960
PENNSYLVANIA ELECTRIC COMPANY, Defendant : IN ASSUMPSIT

PRELIMINARY OBJECTIONS OF PENNSYLVANIA ELECTRIC COMPANY,
THE DEFENDANT.

The defendant, Pennsylvania Electric Company, files Preliminary Objections to the complaint of the plaintiff as follows:

1. This action of Assumpsit for the loss of projected future profits from an agreement for services, alleged to have been cancelled by the defendant, cannot be maintained because it appears from the complaint that the writings relied upon by the plaintiff constituted a mere work order which might be cancelled without cause by either party at any time.

2. This action of Assumpsit for the loss of projected future profits on the removal of 15,792 cubic yards of ash, being the ash remaining in the pond after termination of the agreement by the defendant, cannot be maintained since the agreement is not alleged to have been an exclusive agreement.

3. The allegations contained in paragraph 8 of the plaintiff's complaint are pleaded in violation of RPC 1019 in that none of the elements making up the plaintiff's alleged cost of completing the clearing out of the pond are specified in the complaint and accordingly it is not possible for the defendant to admit or deny the truth of the plaintiff's assertion that the cost of completion would have been \$4,981.71.

WHEREFORE the defendant respectfully requests
that the plaintiff's complaint may be stricken off and
judgment be entered for the defendant.

James E. Nevling
of Nevling and Davis

Attorneys for the Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
PENNSYLVANIA

No. 276 November Term 1960

VON B. JOHNSON, Plaintiff

vs.

PENNSYLVANIA ELECTRIC
COMPANY,
Defendant

PRELIMINARY OBJECTIONS OF
PENNSYLVANIA ELECTRIC
COMPANY, THE DEFENDANT.

NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

VON B. JOHNSON :
VS : No. 276 November Term 1960
: IN ASSUMPSIT
PENNSYLVANIA ELECTRIC :
COMPANY :
:

O R D E R

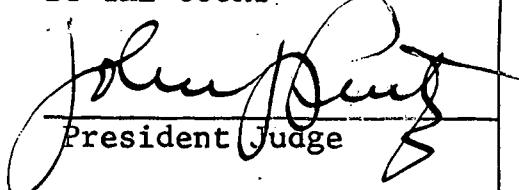
NOW, July 12, 1961, Preliminary Objections filed in the above matter are overruled.

The Complaint in assumpsit is based upon a writing, whether a contract, or purchase order, which is sufficient to support the allegation of plaintiff for loss of profits by termination thereof by the defendant.

The pleading concerning the loss of profits is in good order, and any further break down of the items of expense would be requiring the plaintiff to plead evidence. This is clearly ruled by the decision in MARINE EQUIPMENT & SUPPLY COMPANY VS. TROJAN BOAT COMPANY, 55 Lancaster Law Review 269.

The Preliminary Objections are refused. Defendant to file its pleading within twenty days from the date hereof. Exception noted.

BY THE COURT


John B. Bent
President Judge

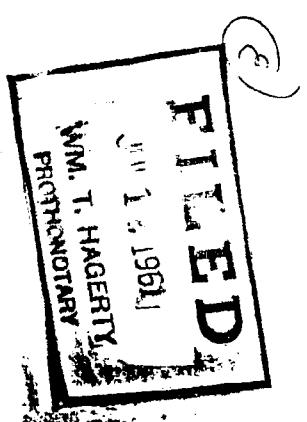
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
IN ASSUMPSIT
No. 276 November Term 1960

VON B. JOHNSON

VS

PENNSYLVANIA ELECTRIC COMPANY

ORDER



JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON, Plaintiff

vs.

PENNSYLVANIA ELECTRIC COMPANY, Defendant

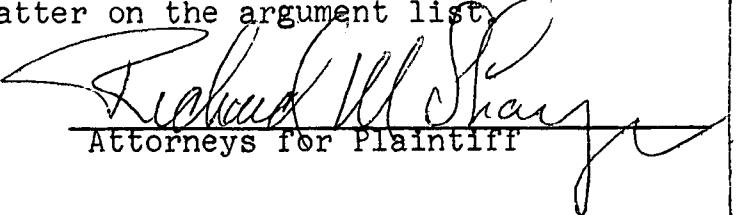
} No. 276 November Term, 1960

} IN ASSUMPSIT

TO THE PROTHONOTARY OF THE SAID COURT:

PRAECIPE

Preliminary objections having been filed, you are hereby directed to place this matter on the argument list.


Richard W. Sharpe
Attorneys for Plaintiff

April 8, 1961

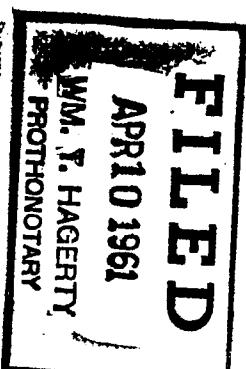
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA.
No. 276 November Term, 1960
IN ASSUMPSIT

VON B. JOHNSON, plaintiff

vs.

PENNSYLVANIA ELECTRIC COMPANY,
defendant

PRAECIPE



RICHARD M. SHARP
ATTORNEY AT LAW
20 N. SECOND ST.
PHILIPSBURG, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON :
vs. : No. 276 November Term 1960
PENNSYLVANIA ELECTRIC COMPANY :
: IN ASSUMPSIT

PRAECIPE

TO WILLIAM T. HAGERTY, PROTHONOTARY:

Please enter our appearance for the defendant,
Pennsylvania Electric Company, in the above entitled
action.

NEVLING AND DAVIS

December 28, 1960

By James K. Nevlung

—Lap-over Margin—

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
no. 276 November Term 1960
IN ASSUMPSIT

VON B. JOHNSON

vs.

PENNSYLVANIA ELECTRIC
COMPANY

PRAECLipe



NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

SHARP & GILPATRICK
ATTORNEYS AT LAW
20 N. SECOND ST.
PHILIPSBURG, PA.
DICKENS 2-4330

June 30, 1961

Honorable John J. Pentz
Court House
Clearfield, Pa.

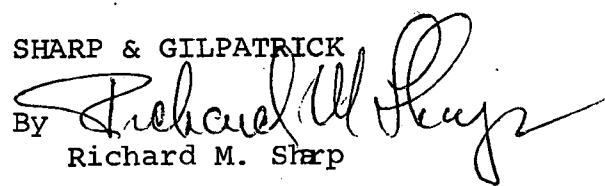
Dear Judge Pentz:

I am herewith enclosing a copy of my brief on preliminary objections with regard to Von B. Johnson vs. Pennsylvania Electric Company.

If you should desire oral argument, if you will please set a date, I am sure Mr. Lee or myself will arrange to attend. If you decide to consider this matter on brief alone, this will be satisfactory.

Very truly yours,

SHARP & GILPATRICK

By 
Richard M. Sharp

RMS:H

c.c. James Nevling, Esq.

c.c. Donald Lee, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON

: No. 276 November Term 1960

vs.

: IN ASSUMPSIT

PENNSYLVANIA ELECTRIC COMPANY

:

TO CARL E. WALKER, PROTHONOTARY:

Please enter my appearance as co-counsel for the defendant, Pennsylvania Electric Company, in the above entitled action.

Robert V. Maine
Robert V. Maine

January 10, 1964

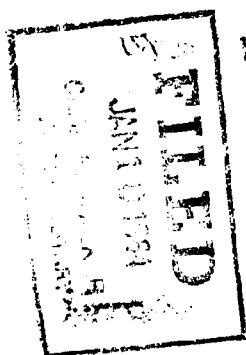
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 276 November Term 1960
IN ASSUMPSIT

VON B. JOHNSON

vs.

PENNSYLVANIA ELECTRIC
COMPANY

Robert V. Maine
Attorney at Law
DuBois, Pennsylvania



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.

VON B. JOHNSON, PLAINTIFF

VS.

PENNSYLVANIA ELECTRIC COMPANY,
DEFENDANT

: No. 276 November Term,
1960

: IN ASSUMPSIT

MOTION FOR DISCOVERY BY INSPECTION AND FOR AN EXTENSION
OF TIME FOR FILING AN ANSWER

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF THE SAID
COURT:

The Defendant, Pennsylvania Electric Company,
appears by its attorneys, Nevling and Davis, and respectfully
moves the Court as follows:

1. The Plaintiff brought this action of assumpsit
against the Defendant to recover damages for the alleged breach
of a written contract and claims damages for \$8,896.05 which
is said by the Plaintiff to be the difference between the
amount which the Plaintiff would have received had he com-
pleted the contract, i.e., \$13,877.76, and the Plaintiff's
cost of completing the contract, i.e., \$4,981.71, all of which
appears from the Plaintiff's complaint.

2. The Defendant, in order to prepare its answer
to this complaint, must determine from the books and records
of the Plaintiff what his costs in connection with his various
operations, on an average basis over a reasonable period of
time, amounted to, and for this purpose desires to inspect
and copy the Plaintiff's copies of his income tax returns for
the years 1958, 1959 and 1960, together with the working papers
supporting these returns, and any riders or exhibits attached
thereto, and also to inspect and copy any and all books of

account of the Plaintiff relating to his costs of operation and other expenses during the same three year period; and the Defendant desires also to have studies and analyses of these records and digests therefrom prepared by its own accountants.

3. The Defendant also intends to give notice to the Plaintiff, within such time as may be reasonably necessary for making arrangements for taking depositions, of its desire to take the deposition of the Plaintiff and of persons known to the Plaintiff who may have knowledge of his actions in connection with the contract, in order to obtain information necessary to permit the Defendant to prepare its answer to the Plaintiff's complaint.

4. That by order of this Court, entered July 12, 1961, the preliminary objections of the Defendant in this matter were overruled and the Defendant was required to plead within twenty days from July 12, 1961, and that the Defendant, as appears from this motion, requires further time for the preparation of its answer.

5. The facts set forth in this motion are entirely based upon matters of record.

WHEREFORE, the Defendant respectfully moves the Court to order:

1. That the Plaintiff produce its copies of its 1958, 1959 and 1960 income tax returns together with any riders and exhibits attached thereto, and the working papers supporting the said returns, for inspection by the Defendant, its attorneys, accountants, representatives, and their respective employees

at a place in Clearfield, Pennsylvania, and at times, to be fixed by the Court.

2. That the Plaintiff be required to produce his books and records of account showing all costs of his operations during the years 1958, 1959 and 1960 to be inspected and copied by the Defendant, its attorneys, accountants, representatives and their employees, at a place in Clearfield, Pennsylvania, and at times to be fixed by the Court.

3. That the records and documents so produced shall at all times be under the custody and control of the Court.

4. That the Defendant's time for filing an answer to the Plaintiff's complaint be extended for a reasonable period after the completion of the discovery by inspection and the taking of the depositions noted in the foregoing motion.

All of which is respectfully submitted,

James K. Nevling

Of Nevling and Davis,
Attorneys for the Defendant,
Pennsylvania Electric Company

—Lap-over Margin—

And now July 25, 1961 service of the within
motion is accepted on behalf of Plaintiff, and
receipt of a copy acknowledged
Richard J. O'Leary
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 276 November Term, 1960
IN ASSUMPSIT

VON B. JOHNSON, PLAINTIFF
VS

PENNSYLVANIA ELECTRIC
COMPANY, DEFENDANT

MOTION FOR DISCOVERY BY
INSPECTION AND FOR AN EXTEN-
SION OF TIME FOR FILING AN
ANSWER



NEVLING & DAVIS
ATTORNEYS AT LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

John Johnson
VERSUS
Pennsylvania Electric
Company, Plaintiff
Carl A. Balchow

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA.

No. 276 Term November 1960

To Prothonotary.

Sir: Enter appearance for

Enter above matter on trial list

in above case.

George and Agnes
Glantz

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.

VON B. JOHNSON, PLAINTIFF :
VS. : No. 276 November Term,
: 1960
PENNSYLVANIA ELECTRIC COMPANY, :
DEFENDANT : IN ASSUMPSIT

ORDER OF COURT ALLOWING DISCOVERY

NOW, August 4th, 1961, a Motion for Discovery by Inspection having been presented to the Court and read and considered, on motion of Nevling and Davis, Attorneys for the Defendant, it is ordered and decreed as follows:

1. That the Plaintiff, Von B. Johnson, produce copies of his 1958, 1959 and 1960 income tax returns together with any riders and exhibits attached thereto, and the working papers supporting the said returns, for inspection by the Defendant, its attorneys, accountants, representatives and their respective employees at the Judge's Chambers in the Court House in Clearfield, Pennsylvania, on or before August 10, 1961.

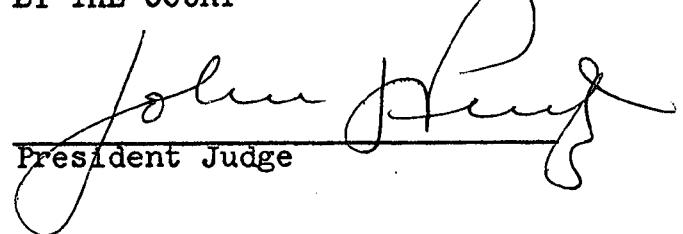
2. That the Plaintiff, Von B. Johnson, produce his books and records of account showing all costs of his operations during the years 1958, 1959 and 1960 to be inspected and copied by the Defendant, its attorneys, accountants, representatives and their employees at the Judge's Chambers in the Court House in Clearfield, Pennsylvania, on or before August 10, 1961.

3. That all of the records and documents so produced may be inspected, copied and studied, and extracts may be made therefrom, by the Defendant, its attorneys, accountants, representatives and their respective employees, during the hours when the Court House shall be open and in such places in the Court House at Clearfield, Pennsylvania, as may be designated from time to time by the Court, it being understood that if it becomes necessary for purposes of photographic reproduction to remove any of these records or documents from the Court House, such removal shall be temporary and under such further conditions of control as the Court may impose.

4. That the inspections and studies to be made for the Defendant shall be concluded on or before August 18, 1961, unless some cause for extention be shown.

5. That the period for filing an answer to the Plaintiff's Complaint by the Defendant, is hereby extended to October 1st, 1961.

BY THE COURT


John H. Peay
President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

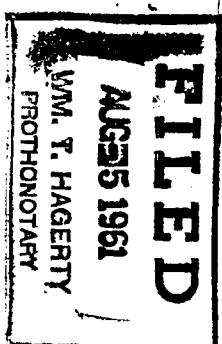
No. 276 November Term, 1960

VON B. JOHNSON, PLAINTIFF

VS.

PENNSYLVANIA ELECTRIC COMPANY,
DEFENDANT

ORDER OF COURT
ALLOWING DISCOVERY



NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO., BLDG.
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON, Plaintiff :
vs. : No. 276 November Term, 1960
PENNSYLVANIA ELECTRIC : IN ASSUMPSIT
COMPANY, :
Defendant :
:

AMENDMENT TO DEFENDANT'S ANSWER

Paragraph 6 of the defendant's answer is amended to read as follows:

6. The allegations contained in paragraph 6 of the complaint are denied as stated. When the plaintiff began work under the work order pond No. 1 contained a total of 66,175 cubic yards of removable ash. It is admitted that the plaintiff had removed 23,956 cubic yards of ash prior to discontinuing work and it is admitted that the contractor who succeeded the plaintiff removed an additional 17,792 cubic yards of ash before suspending operations on November 13, 1960.

James F. Newling
Of Counsel for the Defendant.

January 20, 1964.

COMMONWEALTH OF PENNSYLVANIA : SS:
COUNTY OF CAMBRIA : :

Before me, a notary public in and for said County and Commonwealth, personally appeared R. F. PRUNER, who being duly sworn according to law, deposes and says that he is the Secretary and Treasurer of the Pennsylvania Electric Company, a corporation, the within named defendant, and that the facts set forth in the foregoing amendment to the defendant's answer are true and correct to the best of his knowledge, information and belief.

R. F. Pruner

Sworn to and subscribed
before me this 23rd day of
January, 1964.

Margaret A. Grady
Notary Public

MARGARET A. GRADY, Notary Public
Johnstown, Cambria County, Penna.
My Commission Expires February 20, 1966

—Lap-over Margin—

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
NO. 276 November Term, 1960
IN ASSUMPSIT

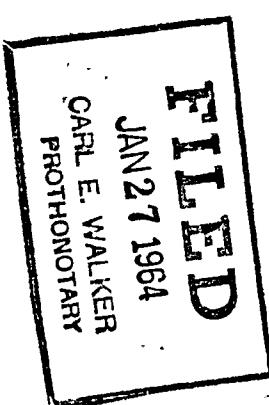
VON B. JOHNSON, Plaintiff

vs.

PENNSYLVANIA ELECTRIC
COMPANY,

Defendant

AMENDMENT TO
DEFENDANT'S ANSWER



NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

VON B. JOHNSON, PLAINTIFF) In the Court of Common Pleas of
VS) Clearfield County, Pa.
PENNSYLVANIA ELECTRIC COMPANY,) No. 276 Nov. Term, 1960
DEFENDANT) In Assumpsit

PLAINTIFF'S ANSWER TO DEFENDANT'S
COUNTER CLAIM

AND NOW, to-wit, this 26 day of December, 1962,
comes Von B. Johnson, the Defendant above named, by Miller,
Kistler & Lee, Esqs., and Richard M. Sharp, Esq., his attorneys,
and states that he has a full, just and complete defense to the
matters set out in the counter claim, the nature whereof is as
follows:

11. In so far as the allegations of Paragraph 11
are relevant to this action, the same are admitted.

12. In so far as the allegations of Paragraph 12
are relevant to this action, the same are admitted.

13. The Plaintiff is unable to admit or deny the
allegations of Paragraph 13 as much as the means of proof are particularly
in the knowledge of the defendant and strict proof thereof is demanded
at the trial of this cause.

14. The Plaintiff is unable to admit or deny the
allegations of Paragraph 14, in as much as the means of proof are
particularly in the knowledge of the defendant and strict proof thereof
is demanded at the trial of this cause.

15. The Plaintiff is unable to admit or deny the
allegations of Paragraph 15, in as much as the means of proof are
particularly in the knowledge of the Defendant and strict proof thereof
is demanded at the trial of this cause.

16. In so far as the allegations of Paragraph 16
are relevant to this action, the same are admitted.

17. The averments of Paragraph 17 are specifically
denied. On the contrary, it is averred that Plaintiff had no knowledge
of the engineering estimate of the defendants and by way of further

answer, it is averred that the purchase order speaks for itself, in that the work was to be completed by December 10, 1960.

18. Paragraph 18 is denied in its entirety and by way of further answer to the specific allegations contained therein, it is averred:

A. That the Plaintiff did not breach his contract as is fully set forth in Paragraphs 4 through 7 of the Complaint, the provisions thereof being incorporated herein by reference.

B. That the Plaintiff supplied sufficient equipment and labor to complete the contract, performing the same in a good and workmanlike manner and was prevented from doing so by order of the defendant on October 27, 1960, as is fully set forth in Paragraph 5 of the Complaint, the provisions thereof being incorporated herein by reference.

C. That Plaintiff had an adequate and proper working schedule and planned the work on a feasible basis as is shown by the fact that he accomplished the removal of 56% of the ash in 34 working days, leaving 44% of the ash to be removed in the 38 working days remaining before completion date called for in the contract. By way of further answer, it is averred that the most difficult part of the removal had been accomplished by the Plaintiff prior to October 27, 1960, with the result that the ash remaining to be removed would have been easier to remove and the same completed well in advance of the completion date specified in the contract.

D. It is specifically denied that Plaintiff substituted services of others and on the contrary, it is averred that the persons used in the execution of the contract, were the employees and members of the Plaintiff's firm, working under the continual, personal supervision of the Plaintiff.

E. It is specifically denied it became necessary for defendant's to hire another contractor and that the Plaintiff did not withdraw from the job, but was ordered to discontinue operations on

October 27, 1960, and that the Plaintiff stood ready, willing and able to complete the contract in accordance with its terms and specifications and was prevented from doing so by the act of the defendant in placing another contractor on the job.

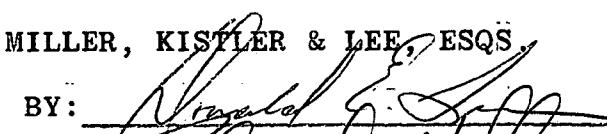
19. The Plaintiff is unable to admit or deny the allegations of Paragraph 19 in as much as the means of proof are particularly within the knowledge of the Defendant and strict proof thereof is demanded at the trial of this cause.

20. It is admitted that the ash remaining in the pond amounted to 17,772 cubic yards. Plaintiff, however, is unable to admit or deny the date of completion in as much as the means of proof are particularly within the knowledge of the Defendant and strict proof thereof is demanded at the trial of this cause.

21 The Plaintiff is unable to admit or deny the allegations of Paragraph 21 in as much as the means of proof are particularly within the knowledge of the Defendant and strict proof thereof are demanded at the trial of this cause.

WHEREFORE, the Plaintiff requests that the Defendant's Counter Claim be dismissed and judgment be entered in favor of Plaintiff.

MILLER, KISPLER & LEE, ESQS.

BY: 


Richard M. Sharp
Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CENTRE.) SS:

VON B. JOHNSON, being duly
sworn according to law, doth depose and say that the facts set
forth in the within and foregoing Answer are true and
correct to the best of his knowledge, information and belief.

Sworn to and subscribed before me
this 31st day of December, 1962
Maurice L. Kauffman

PROTHONOTARY,
My Commission Expires
First Monday in Jan. 1964

Von B. Johnson
VON B. JOHNSON

VON B. JOHNSON

In the Court of Common Pleas
of Clearfield County, Pa.
No. 276 Nov. Term, 1960
In Assumpsit

VON B. JOHNSON, PLAINTIFF

VS

PENNSYLVANIA ELECTRIC
COMPANY, DEFENDANT

PLAINTIFF'S ANSWER TO
DEFENDANT'S COUNTER CLAIM



LAW OFFICES OF
MILLER, KISTLER & LEE
BELLEFONTE, PENNSYLVANIA
CRIDERS EXCHANGE BUILDING

December 27, 1962, service of the within answer
to defendant's counterclaim accepted by copy.

James K. Nestling of
Nestling and Davis, Atys
for defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
VON B. JOHNSON, Plaintiff }
Vs. } No. 276, November Term, 1960
PENNSYLVANIA ELECTRIC COMPANY, Defendant }
IN ASSUMPSIT

COMPLAINT

Comes the Plaintiff and by his attorneys, Sharp & Gilpatrick, Esqs., Philipsburg, Pennsylvania, and Miller, Kistler & Lee, Esqs., Bellefonte, Pennsylvania, brings this action against the Defendant, upon the following statement:

1. The Plaintiff is an individual who resides in the Borough of Snow Shoe, Centre County, Pennsylvania.
2. The Defendant is a public utility corporation, incorporated under the laws of the Commonwealth of Pennsylvania and having its office or principal place of business in the City of Johnstown, Cambria County, Pennsylvania.
3. On or about September 9, 1960, the Plaintiff and Defendant entered into a written contract, a copy of the same being hereto annexed, labeled Exhibit "A", and by this reference incorporated herein, whereby the Plaintiff agreed to furnish all the labor, trucks and equipment necessary to remove and transport all ash from a settling pond, property of Defendant, located in Goshen Township, Clearfield County, Pennsylvania, known as No. 1 Pond, for an agreed price of Seventy-eight (78¢) cents per cubic yard.
4. On or about the Fifteenth day of September, 1960, the Plaintiff undertook the execution of the contract and proceeded to remove the ash from Pond No. 1 and to transport the same to the dump on the property of the Pennsylvania Electric Company, as specified therein.
5. In accordance with the contract, the Plaintiff did and performed all work and furnished equipment necessary to fulfill

his obligation under said contract until October 27, 1960, when the Defendant, without cause or provocation, ordered the Plaintiff by telephone to discontinue all operations upon said Pond, which order of discontinuance and termination was confirmed in writing by Defendant by instrument dated November 4, 1960, a copy of the same being hereto annexed, labeled Exhibit "B" and by this reference incorporated herein.

6. Pond No. 1, subject of the aforementioned contract, contained a total of Forty-one thousand seven hundred forty-eight (41,748) cubic yards of removable ash. To the time Defendant breached said contract by ordering Plaintiff to discontinue, the Plaintiff had removed a total of Twenty-three thousand nine hundred and fifty-six (23,956) cubic yards of ash, for the removal of which Plaintiff has received payment.

7. The Plaintiff was prevented from completing performance under the contract, to wit: removal of the remaining Fifteen thousand seven hundred ninety-two (15,792) cubic yards of ash from Pond No. 1 by the act of Defendant in ordering discontinuance of operations and termination of the contract without cause and without authority to do so under the terms of said contract.

8. The total amount to which the Plaintiff would have been entitled under the terms of the contract is the sum of Thirty-two thousand five hundred sixty-three dollars and forty-four cents (\$32,563.44), of which sum the Plaintiff has received of the Defendant Eighteen thousand six hundred eighty-five dollars and sixty-eight cents (\$18,685.68), leaving a balance of Thirteen thousand eight hundred seventy-seven dollars and seventy-six cents (\$13,877.76). The Plaintiff's cost of completion of the contract would have been the sum of Four thousand nine hundred eighty-one dollars and seventy-one cents (\$4,981.71), leaving a balance due and owing Plaintiff by Defendant in the amount of Eight thousand

eight hundred ninety-six dollars and five cents (\$8,896.05).

9. Although requested, the Defendant has refused to pay Plaintiff this sum.

WHEREFORE, Plaintiff demands judgment of the Defendant in the sum of Eight thousand eight hundred ninety-six dollars and five cents (\$8,896.05), together with interest from December 10, 1960.

SHARP & GILPATRICK

By Robert W. Sharp

MILLER, KISTLER & LEE

By Donald E. Lee

COMMONWEALTH OF PENNSYLVANIA)

)
COUNTY OF CENTRE.) SS:

VON B. JOHNSON, being duly
sworn according to law, doth depose and say that the facts set
forth in the within and foregoing Complaint are true and
correct to the best of his knowledge, information and belief.

Sworn to and subscribed before me)

this 27 day of February, 1961)

George Fleas)

Notary Public

Commission expires 2/23/65)

Von B. Johnson

VON B. JOHNSON

PENNSYLVANIA ELECTRIC COMPANY

222 LEVERGOOD STREET

JOHNSTOWN, PA.

EXHIBIT #A.

76163

ORDER NO. _____

PURCHASE ORDER

DATE September 6, 1960

REQUISITION NO. CL-57

PLEASE SHIP TO

Pennsylvania Electric Company

Showville, Pennsylvania

REFLECT TO THE CONDITIONS ON THE BACK OF THIS FORM

**OUR ORDER NUMBER AND REQUISITION NUMBER
MUST APPEAR ON ALL INVOICES AND PACKAGES**

Term. Trucks

SHIP VIA

Must be completed on or

DELIVERY REQUIRED

before October 16, 1960

ITEM NO.	QUANTITY	ACT. NO. 703.3-4	MATERIAL	LIST PRICE	COMMENT
		<p>Remove all lumber, timber, tools and other lumbering equipment including lumber required to build electric power building up to the roof - 18' x 20' x 24' high. E. 1 Pond, Showville Plant - construct an approximately 1.7 miles on improved earthen road and dam on Showville property.</p> <p>Delivery must be Showville at 8:00 AM CDT.</p> <p>The actual quantity removed to be determined by Volumetric survey to be made by the乙方. Price must be settled on or before 10/10/60. Shipping road if it's not be damaged along side of roads.</p> <p><u>Important: Insurance Clause</u> Insurance note: It is understood in this contract that the甲方 is entitled to receive certificates evidencing adequate insurance including Workmen's Compensation, Insurance for Third Party Injury and Property Damage Liability Insurance and Automobile Bodily Injury and Property Damage Liability Insurance.</p> <p>All the above to be in accordance with your proposal dated 8/15/60 and letters dated 8/30/60 and 9/7/60.</p> <p>TERMS: P. O. D.</p>		\$0.70 per cu. yd.	Not paid yet.

PLEASE ACKNOWLEDGE RECEIPT OF THIS ORDER. IF ANY ITEM CANNOT BE DELIVERED BY RECEIVED DATE, WE SHOULD BE ADVISED BY RETURN MAIL OR TO Pennsylvania Electric Company - Johnstown, Pa.
MAIL CREDIT AND 8 CENTS OF FREIGHT AND SHIPPING RECEIPTS TO PECO.

PENNSYLVANIA ELECTRIC COMPANY


F. J. Stumpf
P. O. Box 1211

PURCHASING AGENT

FOA Rev. 1034

EXHIBIT "A"

PENNSYLVANIA ELECTRIC COMPANY

222 LIVERGOOD STREET

JOHNSTOWN, PA.

ORDER NO. 76166

EXHIBIT #B

PURCHASE ORDER

DATE November 4, 1960

REQUISITION NO. CWS-752

Van B. Johnson

Snow Shoe, Pennsylvania

PLEASE SHIP TO

Pennsylvania Electric Company

Shawville, Pennsylvania

CONCERN TO THE CONDITIONS ON THE BACK OF THIS FORM

OUR ORDER NUMBER AND REQUISITION NUMBER
MUST APPEAR ON ALL INVOICES AND PACKAGES

DELIVERY REQUIRED

ITEM NO.	QUANTITY	ACCT. NO. 703.04	MATERIAL	LOT	DISCOUNT
		CONFIRMING	PAGE TWO This is Page 2 of the above order dated September 9, 1960. <u>PLEASE CANCEL ENTIRE ORDER!</u> Confirming our phone conversation of 10/27/60.		

TERMS:

F. O. B.

PLEASE ACKNOWLEDGE RECEIPT OF THIS ORDER. IF ANY ITEM CANNOT BE DELIVERED BY REQUISITION DATE, IT SHOULD BE ADVISED BY RETURN MAIL. BILL TO Pennsylvania Electric Company, Johnstown, Pennsylvania. MAIL ORIGINAL AND 3 COPIES OF INVOICE AND SHIPPING RECEIPTS TO 8010.

PENNSYLVANIA ELECTRIC COMPANY

BY

P. J. STOUFFER, PURCHASING AGENT

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA.

No. 276 November Term, 1960
IN ASSUMPTION

VON B. JOHNSON, Plaintiff

四

PENNSYLVANIA ELECTRIC
COMPANY, Defendant

COMPLAINT

TO THE WITHIN DEFENDANT:
You are hereby required to
plead to the within Complaint
within twenty (20) days from
the Service hereof.

Attn: Attorneys for Plaintiff

RICHARD M. SHAPIRO

ATTORNEY AT LAW

THE LAW

20 N. SECOND ST.
PHILIPSBURG, PENNSYLVANIA

March 17, 1961, service accepted by copy.
James E. Newling of
Newling & Davis
Attn: of Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON, Plaintiff :
vs. : No. 276 November Term, 1960
PENNSYLVANIA ELECTRIC COMPANY, Defendant : IN ASSUMPSIT

MOTION TO AMEND

AND NOW, to wit, this 23rd day of January, 1964, the defendant, by its attorneys, moves the Court to grant a rule on Von B. Johnson, the plaintiff above named, to show cause why paragraph 6 of the answer heretofore filed in the above cause should not be amended to read as follows:

6. The allegations contained in paragraph 6 of the complaint are denied as stated. When the plaintiff began work under the work order pond No. 1 contained a total of 66,175 cubic yards of removable ash. It is admitted that the plaintiff had removed 23,956 cubic yards of ash prior to discontinuing work and it is admitted that the contractor who succeeded the plaintiff removed an additional 17,792 cubic yards of ash before suspending operations on November 13, 1960.

James T. N. Albus
Of Counsel for the Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON, Plaintiff :
vs. : No. 276 November Term, 1960
PENNSYLVANIA ELECTRIC COMPANY, Defendant : IN ASSUMPSIT

ORDER OF COURT

AND NOW, to wit, this 23rd day of January, 1964, on motion of the attorneys for the defendant a rule is entered on the plaintiff, Von B. Johnson, to show cause why the 6th paragraph of the defendant's answer should not be amended to read as follows:

6. The allegations contained in paragraph 6 of the complaint are denied as stated. When the plaintiff began work under the work order pond No. 1 contained a total of 66,175 cubic yards of removable ash. It is admitted that the plaintiff had removed 23,956 cubic yards of ash prior to discontinuing work and it is admitted that the contractor who succeeded the plaintiff removed an additional 17,792 cubic yards of ash before suspending operations on November 13, 1960.

Returnable January 27, 1964, at 10:00 A. M.

BY THE COURT,

John A. Cherry
President Judge

New, January 27, 1964, Rule made
absolute.

John A. Cherry
President Judge

John B. Johnson
OF COUNSEL FOR THE PLAINTIFF.

Court is accepted by copy and issuance of the rule is waived.

January 31, 1964, service of the within motion and order of

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 276 November Term, 1960
IN ASSUMPSIT

VON B. JOHNSON, Plaintiff

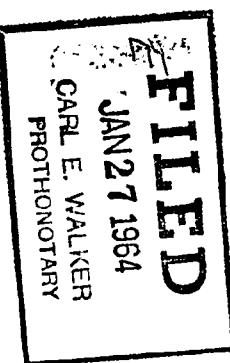
VS.

PENNSYLVANIA ELECTRIC
COMPANY,

Defendant

MOTION TO AMEND

ORDER OF COURT



NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO., BLDG.
CLEARFIELD, PA.

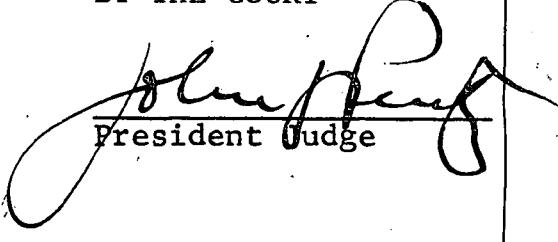
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

VON B. JOHNSON :
VS : No. 276 November Term 1960
PENNSYLVANIA ELECTRIC COMPANY :

O R D E R

NOW, February 7, 1963, on stipulation of the parties, this case is continued until May Term of jury trials.

BY THE COURT


John H. Peay
President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

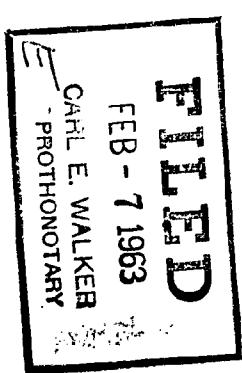
No. 276 November Term 1960

VON B. JOHNSON

VS

PENNSYLVANIA ELECTRIC COMPANY

ORDER



JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON

:

VS.

:

No. 276 November Term, 1960

PENNSYLVANIA ELECTRIC COMPANY

:

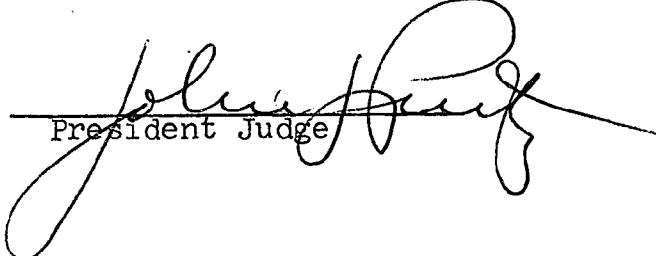
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O R D E R

NOW, April 22, 1963, on stipulation of the
attorneys for all parties, this case is continued.

BY THE COURT,



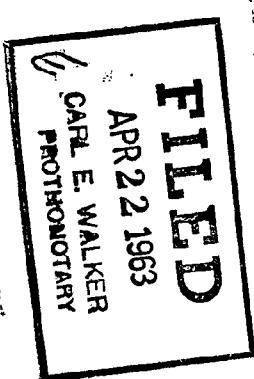
President Judge

VON B. JOHNSON

VS.

PENNSYLVANIA ELECTRIC CO.

O R D E R



NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

Tom B Johnson

VERSUS

Dennis. Electric Company

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA.

No. 276 Term November 1960

To Carl Walkers

Prothonotary.

Sir: Enter appearance for

Plaintiff in the matter on the
final list.

in above case.

George S. Gantner
Dennis Electric Company
Attorney for Tom B Johnson

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON, :
Plaintiff :
: vs. : No. 276 November Term, 1960
: :
PENNSYLVANIA ELECTRIC : IN ASSUMPSIT
COMPANY, :
Defendant :
:

DEFENDANT'S ANSWER

AND NOW, to wit, this 22nd day of October, 1962, comes Pennsylvania Electric Company, the defendant above named, by Nevling and Davis, its attorneys, and states that it has a full, just and complete defense to the matters set out in the complaint, the nature whereof is as follows:

1. The allegations contained in paragraph 1 of the complaint are admitted.

2. The allegations contained in paragraph 2 of the complaint are admitted.

3. The allegations contained in paragraph 3 of the complaint are denied as stated. It is admitted that defendant issued its purchase order No. 76166 to plaintiff on September 9, 1960 and that Exhibit A attached to the complaint is a correct copy of that order. It is denied, however, that the order required plaintiff only to furnish labor, trucks and equipment necessary to remove and transport ash from the No. 1 Pond at defendant's Shawville Plant; and it is alleged that the order also stated other requirements, among them, that the pond must be emptied on or before December 10, 1960.

4. The allegations contained in paragraph 4 of the complaint are denied as stated. It is admitted that work was begun on the defendant's purchase order No. 76166, but it is denied that ash was removed until September 19, 1960, and is

denied that the work was begun by plaintiff. It is alleged that the work was begun and conducted by a partnership consisting of plaintiff and his son, Don R. Johnson, and the employees of the partnership.

5. The allegations contained in paragraph 5 of the complaint are denied as stated.

It is alleged that the plaintiff failed to furnish the equipment necessary to perform the work specified in defendant's purchase order No. 76166 in that:

(a) The partnership in which plaintiff was a partner began ash removal work on September 19, 1960, with one ten ton truck and three eight ton trucks which were insufficient to remove the ash as promptly as the order required and, after protest by the defendant, on September 26, 1960 added two twelve ton trucks, and on October 17, 1960 added one twelve ton truck; and that even after these additions the trucks of the partnership were not sufficient to remove the ash as promptly and completely as the order required; and

(b) The partnership began ash removal work on September 19, 1960 with one crane, a 1020 Unit model with a 45 foot boom and 7/8ths yard clam bucket; on September 22, 1960, the partnership moved in a Shield Bantam crane with 1/2 yard drag bucket with 42 foot boom and a 600 Terratrac tractor; and on or about October 15, 1960, the partnership moved in a third crane; and that this excavating machinery was insufficient to remove the ash as promptly and as completely as the order required; and

(c) Plaintiff and the partnership failed to supply adequate equipment to pump out the water and to remove and haul the ash.

It is alleged that plaintiff failed to perform the work in accordance with the terms of defendant's purchase order No. 76166 in that:

(a) Plaintiff and the partnership adopted a method of removing the ash from the pond which rendered it impossible to remove all the ash on or before December 10, 1960, and

(b) Plaintiff and the partnership did its work in a careless, negligent manner so that the railroad operations at defendant's plant were interfered with, and so that the private roads at defendant's plant were rendered unsafe for travel, and so that the operations of plaintiff were unduly delayed.

It is admitted that the defendant on October 27, 1960, by telephone advised the plaintiff that it was cancelling the job, because the plaintiff was not conducting his operations in accordance with the purchase order, that this cancellation was confirmed in writing on November 4, 1960 and that Exhibit "B" attached to the complaint is a correct copy of that confirmation. It is denied, however, that this action was taken by defendant without cause or provocation; and is alleged that it was taken because the plaintiff or his partnership had insufficient equipment and labor, and adopted a method of removing ash and conducted operations in such a manner as to make it impossible for plaintiff or his partnership to remove all the ash from the defendant's No. 1 pond by December 10, 1960, as provided in the defendant's purchase order.

It is further alleged that when plaintiff was notified by telephone of the cancellation of the job he acquiesced therein and agreed to pump out the water in the pond, so that it could be surveyed, and agreed to remove the machinery from the pond area and made no further effort to resume work until

November 14, 1960, when he wrote defendant offering to resume work.

6. The allegations contained in paragraph 6 of the complaint are denied as stated. It is admitted that the plaintiff had removed 23,956 cubic yards of ash prior to discontinuing work on defendant's order, and it is admitted that the contractor who succeeded the plaintiff removed an additional 17,792 cubic yards before suspending operations on November 13, 1960.

7. The allegations contained in paragraph 7 of the complaint are denied as stated.

It is denied that plaintiff or his partnership was prevented from completing the work under the purchase order and, on the contrary, it is alleged that he acquiesced in the cancellation of the job when notified of it. For further answer the allegations contained in paragraph 5 of this answer are by reference incorporated herein.

It is denied that defendant cancelled the job without cause or authority to do so. For further answer the allegations contained in paragraph 5 of this answer are by reference incorporated herein.

8. The allegations contained in paragraph 8 of the complaint are denied as stated.

It is admitted that the defendant has paid the plaintiff \$18,685.68 being in full payment for the 23,956 cubic yards of ash removed by plaintiff at the price of 78 cents per cubic yard specified in defendant's work order.

It is denied that the defendant is indebted to the plaintiff in any amount for the alleged quantity of ash removable but not removed by plaintiff.

The defendant demands proof of the averment that the plaintiff's cost of completing work under the purchase order, or the costs of the partnership which performed such work as

was done, would have been \$4,981.71 and alleges that he is without knowledge or information sufficient to form a belief as to the truth of the averment, even after reasonable investigation, and that the means of proof are within the exclusive control of an adverse party.

For further answer the allegations contained in paragraphs 5 and 7 of the answer are incorporated herein by reference.

9. The allegations contained in paragraph 9 of the plaintiff's complaint are denied as stated. It is alleged that until suit was filed no request for payment of any further amount on the purchase order was made by plaintiff.

NEW MATTER

In further answer to plaintiff's complaint defendant avers the following new matter:

10. That there was a failure of consideration for the agreement between the plaintiff and defendant in relation to removing the ash from the No. 1 pond in that the plaintiff through his failure to supply sufficient equipment and labor, his failure to work in a careful manner, his failure to form working plans on a feasible basis, and his failure to proceed in accordance with any workable plan, made it impossible for the plaintiff to remove all ash from the pond by December 10, 1960, in accordance with the terms of defendant's purchase order.

For further answer the allegations contained in paragraphs 5 and 7 of the answer are incorporated herein by reference.

WHEREFORE, the defendant requests that plaintiff's complaint be dismissed and judgment be entered in favor of defendant.

COUNTERCLAIM

Defendant further says that it has a cause of action against the above-named plaintiff for the sum of \$2,846.72 of the following nature and character:

11. That the Shawville Plant of the defendant at which the No. 1 ash pond is located is a major electrical generating plant producing and supplying electric power to thousands of homes, to many public institutions and to many industries.

12. That the defendant is under both legal and moral obligations to keep the said Shawville Plant in continuous operation and to supply electric power from it to consumers.

13. That it is essential to the continued operation of the Shawville Plant that the ash from the steam generating equipment be promptly removed and disposed of.

14. That the removal of fly ash from the defendant's Shawville Plant is accomplished by adding water to the ash and pumping it through pipes, first to the No. 1 pond and when that pond is full to the No. 2 pond and that the quantity of ash to be thus removed amounts to more than 100 net tons per day.

15. That, if both the No. 1 pond and the No. 2 pond were filled with ash, it would be necessary to shut down the Shawville Plant until one or the other of the ponds was substantially empty.

16. That on September 9, 1960 when the defendant's purchase order No. 76166 to remove all the ash from the No. 1 pond (plaintiff's Exhibit A) was issued to plaintiff, the ash from the Shawville Plant was being pumped to the No. 2

pond; and that this fact was known to plaintiff prior to bidding for the said work.

17. That at the time of the issuance of the said order to plaintiff on September 9, 1960 and prior to the bidding for the work it was known to plaintiff that defendant's engineers estimated that the No. 2 pond would be full by December 10, 1960.

18. That upon the breach of plaintiff's contract duty by failure of the plaintiff to supply sufficient equipment and labor, his failure to work in a careful manner, his failure to form working plans on a feasible basis, his failure to proceed in accordance with any workable plan, and his substitution of the services of others for his own services which had been contracted for, it became necessary, after the plaintiff's withdrawal from the job on October 27, 1960, for the defendant to hire another contractor to complete as much of the ash removal from No. 1 pond as possible.

19. That after plaintiff's withdrawal from the job on October 27, 1960 the defendant employed another contractor to remove as much ash as possible, in view of the condition of the pond after plaintiff's withdrawal, but was required to pay and did pay the new contractor a price of 94¢ per cubic yard or 16¢ more per cubic yard than plaintiff's contract called for.

20. That the new contractor removed from the No. 1 pond an additional 17,792 cubic yards before suspending operations on November 13, 1960.

21. That the defendant on January 13, 1961, paid the new contractor for the removal of this additional 17,792 cubic yards at the price of 94¢ per yard, and thus suffered a loss of 16¢ per yard or \$2,846.72.

WHEREFORE the defendant claims judgment in favor of the defendant and against the plaintiff in the sum of \$2,846.72.

James K. Nevling
Of Nevling and Davis,
Attorneys for Defendant.

COMMONWEALTH OF PENNSYLVANIA : : SS:
COUNTY OF CAMBRIA : : .

Before me, a notary public in and for said County and Commonwealth, personally appeared R. F. PRUNER, who being duly sworn according to law, deposes and says that he is the Secretary and Treasurer of the Pennsylvania Electric Company, a corporation, the within named defendant, and the facts set forth in the foregoing answer, new matter and counterclaim are true and correct to his personal knowledge, information and belief.

R. F. Pruner

Sworn to and subscribed
before me this 5th day of
November, 1962.

Margaret A. Grady
Notary Public

MARGARET A. GRADY, Notary Public
Johnstown, Cambria County, Penna.
My Commission Expires February 20, 1966

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 276 November Term, 1960
IN ASSUMPSIT

VON B. JOHNSON, Plaintiff

vs.

PENNSYLVANIA ELECTRIC
COMPANY,

Defendant

DEFENDANT'S ANSWER,
NEW MATTER AND
COUNTERCLAIM

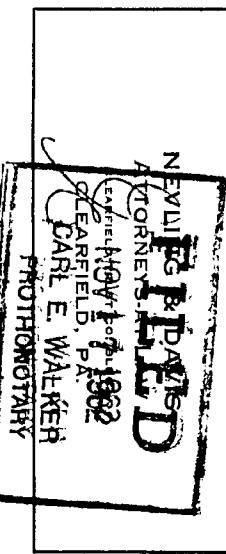
TO THE PLAINTIFF:

You are hereby notified
to plead to the enclosed
answer, new matter and
counterclaim within 20 days
from service hereof.

James F. Davis
of Nevling and Davis,
Attorneys for the
Defendant.

Am. Nov. 24, 1960

James F. Davis
Attala / *E. J. T.*



In the Court of

COMMON PLEAS of

Clearfield County.

VON B. JOHNSON

Plaintiff

VERSUS

PENNSYLVANIA ELECTRIC COMPANY

Defendant

Of November

Term, 1960

No. 276

Plaintiff's

Bill of Costs

At

Term. 19.

CLEARFIELD COUNTY, SS:

Personally appeared before me Richard M. Sharp, Esq., who being duly sworn, saith the above Bill of Costs is correct, that the witnesses named were subpoenaed, necessary, material, and in attendance as above stated, and that the mileage is correct as he believes.

'Sworn to and subscribed before me this

22 day of February A.D. 1964

day of February, A. D. 1901

..... day of A. D. 19.....
Carl E. Walker, Prothonotary

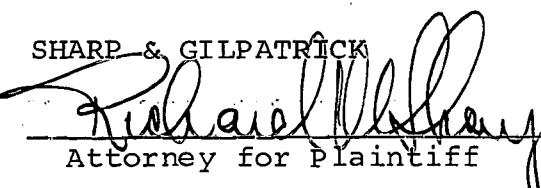
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

VON B. JOHNSON, :
Plaintiff :
vs. : No. 276 November Term, 1960
PENNSYLVANIA ELECTRIC CO., : In Assumpsit
Defendant :
:

TO THE PROTHONOTARY:

Enter judgment on the verdict in favor of the Plaintiff.

SHARP & GILPATRICK


Richard W. Sharp
Attorney for Plaintiff

March 13, 1964

2000⁰⁰ 3/14/1/31/64
Verdict

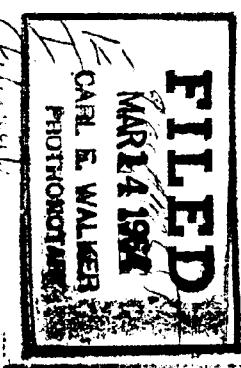
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA.
No. 276 November Term, 1960
In Assumpsit

VON B. JOHNSON, Plaintiff

vs.

PENNSYLVANIA ELECTRIC CO.,
Defendant

PRAECTIVE



SHARP & GILPATRICK
ATTORNEYS AT LAW
20 N. SECOND ST.
PHILIPSBURG, PA.

VON B. JOHNSON

VS.

PENNSYLVANIA ELECTRIC COMPANY

In the Court of Common Pleas
Clearfield County, Pennsylvania

No. 276 Nov. Term, 19 60

CERTIFICATE OF DISCONTINUANCE

Commonwealth of Pennsylvania }
County of Clearfield } SS

I Carl E. Walker , Prothonotary of the Court of Common Pleas, in and for
the County and Commonwealth aforesaid, do hereby certify that the above stated case was this day,
the 1st day of April A. D. 19 64 marked settled, and discontinued

Record costs in the sum of \$ 65.50 have been paid in full by Pa. Electric Co. by
James K. Nebling, Atty.

In Witness Whereof, I have hereunto affixed my hand and seal of this Court at Clearfield,
Clearfield County, Pennsylvania, this 1st day of April A. D. 19 64.

.....
Prothonotary

STATEMENT OF JUDGMENT

Docket No. 123 ✓

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

✓ Von B. Johnson

VERSUS

Pennsylvania Electric Company ✓

No.	TERM	Nov.	19 60
Penal Debt		\$	
Real Debt		\$	2000.00
Atty's Com.		\$	
Int. from		\$	
Entry & Tax		\$	4.00
Atty Docket		\$	1.50
Satisfaction Fee		\$	2.00
Assignment Fee		\$	2.00
Instrument Judgment on Verdict		\$	
Date of Same	March 14,	19 64	
Date Due		19	
Expires	March 14,	19 69	

Entered of Record 14th day of March 19 64

Certified from Record 21st day of March 19 64

Paul E. Walker
Prothonotary