

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41019
(Summary Calendar)

RONNIE MIXON DRILLING, INC.,
Plaintiff-Appellant,

versus

METFUEL, INC.,
Defendant-Appellee.

Appeal from United States District Court
for the Western District of Louisiana
(91-CV-1466)

July 10, 1995

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

Ronnie Mixon Drilling, Inc. ("Mixon") and Metfuel, Inc. entered into a drilling contract which provided, *inter alia*, that Metfuel would pay Mixon for drilling services, for "standby" time during which Mixon was in readiness to perform drilling services but awaiting orders from Metfuel, for damage to drill pipe and drill collars, and for costs of demobilization upon termination of the drilling operations. Drilling operations ceased on December 16, 1990 and in March, 1991 Mixon made formal demand upon Metfuel for \$374,032.00, \$282,000 of which was for standby time at the

* **Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.**

contractual rate of \$3,000 per day from December 21, 1990 to March 25, 1991; \$84,961.33 was for \$8.61 per foot for damage to 7929 feet of drill pipe; \$10,350 for damage to drill collars; and the balance of which was for demobilization and fuel adjustment. Metfuel did not pay this amount and Mixon filed suit for contractual damages.

The district court determined that Mixon was not entitled to payment for standby time and awarded damages to Mixon in the total amount of \$52,573.37 plus interest, costs, and reasonable attorneys fees.¹ Mixon appeals, contending that it is entitled to the \$3,000 per day of standby time during the weeks which followed the December 16, 1990 cessation of drilling operations, and to a larger award for damage to its drill pipe. Finding no error, we affirm.

FACTS

Pursuant to a drilling contract with Metfuel, Ronnie Mixon Drilling, Inc. operated a drilling rig in the Cedar Grove, Alabama field, part of the Black Warrior land formation near Tuscaloosa, Alabama from March 1990 through December 16, 1990. After drilling the last of 32 wells in December 1990, Mixon awaited more work from Metfuel, but Metfuel did not require Mixon's services in 1991. On April 1, 1991, Mixon invoiced Metfuel for payment of amounts allegedly due under the drilling contract. Metfuel did not pay the requested amounts, and Mixon filed suit in

¹ **The district court awarded the amount which Mixon had demanded for damage to drill collars, fuel surcharges, as well as for demobilization and cost of moving substructure and mud tanks from Alabama. The district court awarded approximately \$35,000 less than the amount in the formal demand for payment of damage to drill pipe.**

Louisiana to recover damages arising from damage to the drill pipe, as well as for amounts due while Mixon was on "standby" awaiting more work orders from Metfuel.

The district court correctly viewed the contract as "the entirety of the law between the parties", and made several factual determinations which include the following: The drilling contract between Mixon and Metfuel terminated on December 16, 1990; Mixon had brought 127 joints of premium grade, range 3, 5 inch drill pipe to Alabama to use in these drilling operations. Each of the 127 joints of drill pipe measures 42 feet long, therefore the terms of the contract indicate that Mixon is entitled to recover for whatever damage there was to the 5334 feet of drill pipe Mixon brought to Alabama. The district court found that Mixon had proven damage to 95 of the 127 joints of drill pipe, and calculated the amount of net damages as the \$8.61 per foot net amount requested by Mixon in its April 1, 1991 invoice to Metfuel. The district court also concluded that, as a matter of law, Mixon is not entitled to the requested "standby" payments because the drilling contract was terminated prior to the time Mixon alleges it was on standby.

Mixon appeals, contending that it had not been released from the contract on December 16, 1990 and that it was placed on "standby" after that date through the latter part of March, 1991. Accordingly, Mixon asserts that it is entitled to receive from Metfuel the \$3,000 per day "standby" pay provided for in the contract, as well as to receive a larger amount per foot than that which the district court awarded for damage to the drill pipe that

Mixon had used in 1990. Mixon also challenges the number of drill pipe joints (and hence the number of feet of drill pipe) determined by the district court, asserting that the district court should have included 68 joints of drill pipe which had been shipped to Louisiana for repairs, as well as 14 joints that were lying on the ground in Alabama but "were too damaged to be inspected."

Finding no clear error in the district court's factual determinations, as well as no error of law, we affirm.

DISCUSSION

The district court had the opportunity to observe the witnesses, and to make an assessment of some factors which are not necessarily ascertainable on the mere reading of a record on appeal. For this reason, we review the district court's factual determinations for clear error. In order to hold that a factual finding is clearly erroneous, we must be left with a definite and firm conviction, from our review of the entire record, that a mistake has been committed; we may not view the evidence differently as a matter of choice, or substitute our judgment for a plausible assessment by the trial judge. Reich v. Lancaster, 1995 WL 337650 (5th Cir., No. 93-1953, June 22, 1995).

Having examined the record, we find no clear error in either the district court's factual findings or its application of the law to those factual findings. The drilling contract provides for the relief which the district court granted to Mixon and, there being no clear error in the factual findings upon which the legal conclusions are based, the judgment rendered by the district court

must stand. Accordingly, for the reasons expressed in the district court's Memorandum Ruling and Judgment, filed August 26, 1994, we AFFIRM.