

Kluwer Arbitration Blog

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Roger Alford (General Editor) (Notre Dame Law School), Crina Baltag (Managing Editor) (Stockholm University), and Monique Sasson · Saturday, November 25th, 2023

The Institute of Transnational Arbitration (ITA), in collaboration with the **ITA Board of Reporters**, is happy to inform you that the latest *ITA Arbitration Report* was published: a free email subscription service available at **KluwerArbitration.com** delivering timely reports on awards, cases, legislation and current developments from over 60 countries and 12 institutions. To get your free subscription to the ITA Arbitration Report, click [here](#).

The ITA Board of Reporters have reported on the following awards.

[Claimant v. Respondent \(Decision of the Tripartite Ad Hoc Committee Composed by the Centre from Amongst the Members of Its Advisory Committee to Decide on the Challenge of the Co-Arbitrators\), CRCICA Case No. \[XXX\], 22 October 2020](#)

Ismail Selim, ITA Reporter for the Cairo Regional Center for International Commercial Arbitration (CRCICA)

The circumstances on the basis of which the challenge is submitted by the Claimant gives rise to justifiable doubts as to the Co-arbitrators' impartiality in accordance with article 13, paragraph 6 of the CRCICA Arbitration Rules.

[An Operator of the Relevant Industry \("First Operator"\) v. Another Operator of the Relevant Industry \("Second Operator"\) \(Award\), CRCICA Case No. XX/2014, 27 March 2016](#)

Ismail Selim, ITA Reporter for the Cairo Regional Center for International Commercial Arbitration (CRCICA)

In CRCICA Case No. XX/2014 (Operator v. Operator), the Arbitral Tribunal articulated the relationship between public administrative regulatory decisions and private operators' agreements of a given industry, clarifying the impact thereof on parties' obligations and performance of a relevant contract. In this landmark case, three regulatory decisions and two administrative court judgements had impacted the agreement. In a highly motivated decision, proceeding to a careful

analysis of the parties' arguments, the Arbitral Tribunal dealt with a controversy between Party autonomy and Regulation.

[Claimant v. Respondents \(Award\), CRCICA Case No. 871/2013, 23 January 2014](#)

Ismail Selim, ITA Reporter for the Cairo Regional Center for International Commercial Arbitration (CRCICA)

An arbitral award rendered on jurisdiction after the bifurcation of the arbitral proceedings. It concerns the validity of an arbitration clause in the MOU entered into between the Claimant and Respondents and whether an express and/or implicit waiver of the arbitration clause had taken place by agreement of the parties.

[Viettel Perú S.A.C. v. Ministerio de Transportes y Comunicaciones \(MTC\) \(Award and Supplementary Decision on Interpretation\), CCL Case No. 0188-2018-CCL, 15 November 2019](#)

Marianella Ventura Silva, ITA Reporter for the Centro de Arbitraje de la Cámara de Comercio de Lima (CCL)

In this award, the arbitral tribunal establishes the liability of each party according to a Concession Agreement concerning the provision of public services (telecommunication bandwidth) and the implication of a Trust Agreement.

[Construcciones Electromecanicas Delcrosa S.A. v. Empresa Regional de Servicio Público de Electricidad del Norte S.A. \(Electronorte S.A.\) \(Award and Supplementary Decision on Interpretation\), CCL Case No. 0185-2018-CCL, 10 June 2019](#)

Marianella Ventura Silva, ITA Reporter for the Centro de Arbitraje de la Cámara de Comercio de Lima (CCL)

The Arbitral Tribunal developed the elements that establish a scenario of “res judicata”: i) identity of parties, ii) identity of object (contract that generated the arbitration) and iii) identity of cause (controversial matter).

Electronoroeste indicated that the Arbitral Tribunal was not competent to decide the case because of a previous arbitration in which Delcrosa had argued about the application of the same penalties that were in discussion in this arbitration.

In the Arbitral Tribunal's opinion, in the previous case Delcrosa had claims different to the ones of the present arbitration.

[Savia Perú S.A. v. Petróleos del Perú – Petroperú S.A. \(Final Award and Procedural Order No. 33, confirming the Final Award\), CCL Case No. 0198-2018-CCL, 12 July 2021](#)

Marianella Ventura Silva, ITA Reporter for the Centro de Arbitraje de la Cámara de Comercio de Lima (CCL)

In this case, the arbitral tribunal determined jurisdictional matters in a partial award, in which it decided on its competence. Also, in the partial award, the arbitrators asked to the parties to try to reach an agreement on some issues of the principal controversy, but it was not possible and, consequently, the arbitral tribunal rendered the final award.

[Savia Perú S.A. v. Petróleos del Perú – Petroperú S.A. \(Partial Award\), CCL Case No. 0198-2018-CCL, 30 August 2019](#)

Marianella Ventura Silva, ITA Reporter for the Centro de Arbitraje de la Cámara de Comercio de Lima (CCL)

In this case, the arbitral tribunal determined jurisdictional matters in a partial award, in which it decided on its competence. Also, in the partial award, the arbitrators asked to the parties to try to reach an agreement on some issues of the principal controversy, but it was not possible and, consequently, the arbitral tribunal rendered the final award.

[A & Anor v. B. \(HKIAC’s decision to confirm the same first co-arbitrator in two related arbitrations involving overlapping parties and similar issues\), HKIAC Case ID CD2023/06/03, 06 January 2023](#)

Louise Wong, ITA Reporter for the Hong Kong International Arbitration Centre (HKIAC)

In an arbitration under the 2018 HKIAC Administered Arbitration Rules, the Claimant designated as first co-arbitrator the same person who had been confirmed as first co-arbitrator in another related arbitration involving overlapping parties and similar issues. HKIAC determined to confirm the first co-arbitrator.

[International Engineering & Construction S.A. v. Baker Hughes Energy Services LLC \(Final Award\), ICDR Case No. 01-18-0002-9174, 30 October 2020](#)

Ernesto M. Hernández, Arnold & Porter , ITA International Centre for Dispute Resolution (ICDR)

This arbitration, governed by the ICDR/AAA International Arbitration Rules, involved claims for breaches of multiple agreements related to the construction and commissioning of two liquified natural gas plants in Nigeria.

Numerous issues arose during performance of these agreements, including without limitation, (i) failure to timely delivery the equipment and materials; (ii) defective designs, components, and equipment; (iii) failure to provide the requisite supervision and training in relation to the installation and operation of the plants; (iv) failure to preserve materials and equipment between delivery and commissioning; (v) failure to make accessible certain areas of the plants; and (vi) gross negligence, willful misconduct, and fraud.

Claimants initiated this arbitration requesting, inter alia, that the Tribunal declare that Respondents breached the various agreements and award Claimants damages and costs. Respondents challenged the Tribunal's jurisdiction over claims asserted by one Claimant, over claims asserted against certain Respondents, and over the Tribunal's ability to award certain relief requested by Claimants. Respondents also filed counterclaims against Claimants.

After issuing its holdings on jurisdiction, the Tribunal held that Respondents breached only one of the agreements and dismissed Claimants' remaining claims. The Tribunal also held Claimants liable for certain of Respondent's counterclaims. The Tribunal awarded damages to both Parties and ordered Claimants to pay a majority of the costs.

[AsiaPhos Limited and Norwest Chemicals Pte Limited v. People's Republic of China \(Award\), ICSID Case No. ADM/21/1, 16 February 2023](#)

Diora Ziyayeva & Julia Grabowska, Dentons, ITA Reporters for the International Centre for Settlement of Investment Disputes (ICSID)

In *AsiaPhos v. China*, the Tribunal found that it had no jurisdiction over Claimants' allegations, ruling that: (i) the China-Singapore BIT limited arbitral jurisdiction to disputes involving the amount of compensation resulting from an expropriation; and (ii) the MFN clause of the BIT did not expand the scope of the parties' consent in the BIT.

[Caroleng Investments Limited v. Bluestone Resources, Inc. \(Award\), ICC Case No. 23546/MK, 13 May 2020](#)

Sarada Nateshan, ITA Reporter for the International Court of Arbitration of the International Chamber of Commerce (ICC)

In this arbitration governed by the International Chamber of Commerce's Rules of Arbitration, the Tribunal found that the Respondent unlawfully deducted sums from the sale of certain coal-producing assets to a third party, and thus breached its obligations under its agreement with the Claimant.

[Origin & Co. Ltd & ILJIN Materials Co. Ltd v. JFI Global Purchasing Ltd & Loblaw Companies Limited \(Final Award\), ICC Case No. 21763/CYK/PTA, 31 December 2017](#)

Inigo Kwan-Parsons, ITA Reporter for the International Court of Arbitration of the International Chamber of Commerce (ICC)

In a dispute concerning the termination of a fashion distribution agreement and an associated parent company guarantee, an ICC tribunal applying New York law and seated in Singapore, considered several arguments before it, including fraud, contractual breaches, and breaches of statutory good faith. Finding that no statutory nor contractual breaches had occurred, the tribunal dismissed all claims made by all parties.

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