Kluwer Arbitration Blog

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Crina Baltag (Managing Editor) (Stockholm University) · Thursday, August 8th, 2024

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 has reported on the following awards.

First Industry Operator v. Second Industry Operator (Award), CRCICA Case No. 1090/2016, 31 December 2018

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

CRCICA Case No. 1090/2016 (First Industry Operator v. Second Industry Operator) is to be read in conjunction with published CRCICA Case No. XX/2014 (Operator v. Operator), in which the arbitral tribunal dealt with the relationship between public administrative regulatory decisions and private operators' agreements of a given industry. In this newly published case, the arbitral tribunal assimilated the request to 'disregard' administrative decisions in the application of the parties' private agreement to a request for cancellation of said decisions, said to pertain to public policy and the exclusive jurisdiction of administrative state courts. The arbitral tribunal's decision also dealt with the *res judicata* effect of administrative judgements cancelling administrative decisions or parts thereof, where such regulatory decisions and judgements impact the private operators' agreement. In a straightforward judgement on the merits, that excluded any decision on the validity of the administrative decisions in issue, the arbitral tribunal decided on the applicability of said administrative decisions to the parties' agreement in order to draw the necessary conclusions as to the parties' respective claims and counterclaims.

Contractor v. Employer (Award), CRCICA Case No. 1314/2019, 04 November 2021

Ismail Selim, CRCICA, ITA Reporter for the CRCICA

In a classic contention between Employer and Contractor, in a construction dispute held before the CRCICA, the appointed Arbitral Tribunal was led to issue several decisions regarding termination, variations, extension of time for completion, and delays, in a comprehensive award hinting at some major tools in assessing Employer's or Contractor's responsibilities and liabilities in accordance with a construction contract. The dispute arose from the termination of a construction contract for the civil, architectural, and electromechanical works of an Employer's renovation project, involving a broad range of issues, ranging from accidents to retrieval of custom clearance assistance and the corresponding attributability of delays. One of the major contention between the Parties who brought forth claims and counterclaims in significant amounts, was the rightful termination of the contract. The Final Award in this case thus highlights the effects and characterization of the differences between an Employer's termination for breach and one for convenience, and dealt with the major issue of structural design and assessment liabilities in renovation contracts, where a contractor is only hired to execute the construction of an Employer's designs.

This fascinating case also led to a further Correction Request and Award, which highlights and deals with disguised attempts to have the Arbitral Tribunal reassess the facts, evidence, and new arguments by the Parties under alleged material errors, of a typographical or computational nature.

Consorcio Consultor Morrope (CCM) v. Programa Nacional de Saneamiento Urbano (PNSU) del Ministerio de Vivienda, Construcción y Saneamiento (Award), CCL Case No. 0318-2022-CCL, 16 December 2023

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

The arbitral tribunal considered that the Consorcio Consultor Morrope ("CCM") incurred a delay during the contractual performance, which was justified due to the lack of collaboration from the Municipality of Morrope in providing necessary information for the completion of the initial deliverable of the contract. Consequently, the arbitral tribunal decided to annul the penalties imposed on CCM and invalidate the contractual termination by PNSU.

María del Carmen Pendavis Miranda Vda. de Basombrío and Others v. Empresa de Servicio de Agua Potable y Alcantarillado de Lima (SEDAPAL) (Award), CCL Case No. 372-2021-CCL, 13 December 2022

Marianella Ventura Silva, Centro de Arbitraje, CCL, ITA Reporter for the CCL

The arbitral tribunal dismissed the objection of lack of competence filed by the SEDAPAL. The Claimants used the term "compensation" to claim payment for the improper use of properties during the conciliation stage, while in arbitration, they used the term "indemnization" to claim the same request. The arbitral tribunal concluded that both claims shared the same controversial fact which was the precarious possession of the properties.

Regarding the main dispute, the arbitral tribunal assessed several facts to determine if there was merit to the Claimants' argument of illegal advantage taken by the SEDAPAL in the acquisition of the two properties. The tribunal also examined whether the injury contractual termination because of injury (unfair advantage), as per article 1448º of the Peruvian Civil Code, could be applied in this case.

Industrias Triveca S.A.C. v. Empresa Municipal de Saneamiento Basico Puno (EMSA Puno) (Award), CCL Case No. 0555-2020-CCL, 23 June 2021

Marianella Ventura Silva, Centro de Arbitraje, CCL, ITA Reporter for the CCL

Peruvian Law provides for different time periods for starting arbitration depending on the nature of the claim. Therefore, certain rights may have different time limits for being claimed.

TRIVECA argued that the EMSAPUNO applied penalties without sufficient justification as required by regulations. Not all delays in contractual performance should be subject to penalties, but only those that were not adequately justified.

Claimant v. Respondent (Award), RAC Case No. I6155-23, 25 May 2023

Elizaveta Mikaelyan, Russian Arbitration Center ("RAC"), ITA Reporter for the RAC

A dispute under the Forwarding Contract for Freight Transportation Organization, pursuant to which the Claimant as forwarder was to provide freight forwarding services to the Respondent as a client, by organizing international transportation or transportation across Russia by rail, road, sea or other modes of transport, and the Respondent was to make certain payments in consideration for these services. The Claimant sought to recover the outstanding additional costs as they could not be calculated prior to the actual provision of these services. The Respondent believed all his debts under the Contract to the Claimant were already covered. Moreover, the Respondent emphasized that its cargo (bottles of red wine) was seriously damaged and delayed, which caused the Respondent's losses. Still, it received no solution or answer from the Claimant. The Respondent is of the view that it does not owe the Claimant "financially or morally", and that the above points should offset the Claimant's claims.

Claimant v. Respondent (Award), RAC Case No. PI7947-22, 05 September 2022

Elizaveta Mikaelyan, RAC, ITA Reporter for the RAC

A dispute from a contract for the supply of perishable goods. During the contract execution by the Claimant, the Respondent stopped paying for the delivered goods, assuring the Claimant that the debt would be repaid later, stating that the lack of payment was caused by the seizure of his accounts by the Federal Tax Service. Later, the Respondent refused to pay for the goods, since a substantial part of the goods received by the Respondent were of poor quality (rotten). Since the negotiations turned out unsuccessful, the Claimant filed with the RAC to recover the debt under the

contract and the late payment interest under the Thailand Civil and Commercial Code. The Respondent failed to comply with the contract procedure for written notification in the event of defective goods delivery; nor was this evidence presented during the arbitration.

Claimant v. Respondent (Award), RAC Case No. PI5251-23, 20 October 2023

Elizaveta Mikaelyan, RAC, ITA Reporter for the RAC

A dispute from a forwarding contract for a freight transportation organization.

Claimant v. Respondent (Award), RAC Case No. PI8252-22, 21 July 2023

Elizaveta Mikaelyan, RAC, ITA Reporter for the RAC

A dispute arising from a supply agreement regarding the collection of debt for products supplied, penalties for late payments, interest on the amount of debt for unlawful withholding of funds, as well as losses in the form of exchange rate differences.

Claimant v. Respondent (Award), RAC Case No. PI6239-22, 04 April 2023

Elizaveta Mikaelyan, RAC, ITA Reporter for the RAC

The parties concluded a contract for the provision of security and safety services. The contract was terminated prematurely due to the Respondent's improper fulfillment of its contractual payment obligations. The Respondent received certificates of services rendered but avoided signing them. Having accumulated a three-month debt, the Respondent avoided pre-trial settlement of the dispute and did not submit its version of the reconciliation report. The Respondent acknowledged the existence and amount of the debt by signing an agreement on termination and settlement of liabilities concerning termination of the contract, undertaking to settle the debt within the time limit, after the expiration of which the Claimant filed a claim with the RAC.

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