

# Kluwer Arbitration Blog

## Reasonable Doubts on Impartiality: The Chilean Court of Appeals Annuls an Arbitral Award Based on the Metadata of the PDF Document

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The Chilean Court of Appeals (the “Court”) recently rendered a decision that underscores the importance of impartiality in domestic arbitration proceedings (the “Decision”). Particularly, the Court annulled an arbitral award after a disciplinary recourse was filed by the respondent against a sole arbitrator and granted for a reason which is highly unusual: the metadata of the award’s PDF document showed the claimant’s lawyer as the author. This discovery raised serious concerns about the integrity of the arbitral award.

The Court’s [Decision](#) to annul the award was predicated on the assertion that the arbitrator’s apparent lack of neutrality violated the constitutional guarantee of due process. Moreover, it infringed upon the fundamental right to an impartial tribunal. The Court’s alignment with the respondent’s perspective regarding the loss of neutrality was a clear affirmation of the Judicial System’s commitment to upholding the principles of fairness and impartiality in legal disputes.

### Events Behind the Decision

After the award was rendered by the sole arbitrator—award which acceded only in part to the Claim—the administrative assistants of the Santiago’s Center of Arbitration and Mediation (“CAM”) sent via email its official and signed PDF copy to the respondents. When the respondents opened the file, the metadata of the PDF showed that the author of the file was the claimant’s lawyer.

This situation triggered the filing of a disciplinary recourse (“*queja*”) against the arbitrator before the Court. This type of recourse requires that a serious infringement or abuse was committed by the arbitrator when issuing the award. Even when the concept of “serious infringement or abuse” has not been defined by law—as there is an intention for it to be a broad concept—it is usually related with the infringement of a judge’s duties, an abuse of their discretionary faculties, lack of seriousness when exercising their role, or serious infringement of rules (*see* José Alberto Allende Pérez de Arce (2019): “El Recurso de Queja,” Ediciones Universidad Católica de Chile, Santiago, Chile).

In this case, the respondents considered that the serious infringement was the violation of the

constitutional guarantee of due process and the fundamental right to impartiality, both essential to the arbitrator's role. Given that in this case the serious infringement directly affected the award, the procedural effect of the granting of the disciplinary recourse would be the annulment of the award.

As part of the procedure of this disciplinary action, the arbitrator was asked to submit his position on the events. The arbitrator denied any violation to due process or that the award was written by the claimant's lawyer; and vehemently confirmed that the award was entirely issued by him. He also explained that to facilitate the work behind the drafting of awards, he sometimes copies parts of the submissions or documents filed by the parties, and that in this case he had indeed copied parts from both parties' submissions. Unfortunately, he was not able to explain why the name of the claimant's lawyer was on the file's metadata.

Also, the Court requested CAM Santiago to provide further information regarding the transpired events, which informed that the award was sent by e-mail from the arbitrator and then, without introducing any changes to the file, it was uploaded to the CAM online platform. Also, the center checked the metadata of the file and confirmed it was the claimant's lawyer who appeared as the author of the file. However, when the document was reviewed again by the Court—by using the credentials that were provided by the CAM to the Court—it appeared that the file was modified, and the claimant's lawyer name was removed from the metadata of the PDF file.

### **Rationale for the Court's Decision and Analysis**

The Court found that the circumstances did indeed constitute a serious infringement or abuse, as the authorship of the award was called into question, raising doubts about a potential influence from one of the parties. Notably, the arbitrator's inability to offer a convincing explanation for the authorship of the file was a critical factor in the Decision.

What is particularly interesting about the Court's ruling is that it was made without establishing all the underlying facts related to the annulment—specifically, it did not explain the reason for why the claimant's lawyer's name appeared on the file. Indeed, the award was annulled without proving whether a party's lawyer had drafted an earlier version of the award or had access to it before the other party.

The Court's decision is clear when explaining that impartiality requires the arbitrator to be unbiased, but also to be perceived as unbiased. When the perception is compromised, and in this case, fails to the point where the authorship of the award becomes uncertain, it is the very essence of justice that is affected. The Court finally explained that there being no satisfactory explanation to the course of the events, these do not guarantee impartiality in the present case, leading to the annulment of the award.

Even when the decision is highly illustrative of how standards on impartiality must be practically applied, the reasoning behind the decision is deeply-rooted in the Chilean judicial system. For instance, this is not the first case that has been annulled by Chilean Courts after having found partiality hints in the judge's conducts, as other judicial decisions have been called into question for similar basis.

## Conclusion

The Decision is key as a reminder of certain aspects of impartiality that will help us understand better how it must be applied from an arbitrator's perspective, and perceived as a party in practice.

First, conduct is extremely relevant when it comes to impartiality. The Decision relies upon almost entirely in external conduct, as the true motives behind the reason why the metadata of the award showed it had not been authored by the arbitrator were never found or explained.

Second, an award can be attacked if reasonable doubts of partiality exist.

Lastly, this case serves as a cautionary tale, reminding all involved in arbitration of the critical importance of safeguarding the integrity and impartiality of the arbitral process which must be reflected in every detail of the arbitral process.

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