Observing The Rules Of Natural Justice In An Arbitration

Introduction

Singapore’s growing position as a regional arbitration hub means that greater attention is being paid to how arbitrations are conducted under our local institutions. In particular, we must observe the legal infrastructure supporting arbitral proceedings, as well as the Singapore Courts’ treatment of such legislation. In *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2012] SGCA 57, the Singapore Court of Appeal had to consider issues relating to the role of the Court in arbitration and the circumstances in which it may set aside arbitral awards.

Following arbitral proceedings between the Plaintiff and Defendant, the Arbitrator had given an award in favour of the Defendant. However, following a request from the Defendant, the arbitrator issued an Additional Award without giving the Plaintiff an opportunity to reply or make submissions on the issue. This Additional Award was then set aside in the High Court.

At the Court of Appeal, both parties appealed. While the Defendant argued that the Additional Award should not have been set aside, the Plaintiff submitted that the Additional Award should have been declared a nullity instead. Both appeals were rejected. The Court decided that it had no supervisory power to declare the award a nullity. It further held that the award had been made in breach of natural justice, and the resulting prejudice to the Plaintiff warranted its setting aside.

Brief Facts

1. The Plaintiff and the Defendant were involved in a construction dispute which they referred to arbitration.

2. After the arbitral proceedings, the Arbitrator rendered a number of awards, culminating in a Supplementary Award in favour of the Defendant. The eventual award consisted of a sum of around $600,000, as well as post-award interest of 5.33%.
Four weeks after the Supplementary Award, the Defendant wrote to the Arbitrator (copied to the Plaintiff) requesting an Additional Award for pre-award interest.

Three days after the request, even though the Plaintiff had yet to reply, the Arbitrator granted the Defendant an Additional Award for pre-award interest. At the time, he had not heard submissions on a number of issues relating to this pre-award interest.

The Plaintiff objected to the Additional Award, and sought the Court’s aid in declaring that the Additional Award a nullity, or else setting it aside.

**Issue**

The High Court Judge set aside the Additional Award under s48(1)(a)(vii) of the Arbitration Act, but decided against declaring the award a nullity.

Both the Plaintiff and Defendant appealed against the High Court decision. The Plaintiff believed that the Additional Award should have been declared a nullity, while the Defendant believed that it should not have been set aside at all. The Court of Appeal thus had to determine:-

(i) Whether the Additional Award should have been declared a nullity; and
(ii) Whether the Additional Award should have been set aside for breach of natural justice.

**Holding of the Court of Appeal**

The Court of Appeal upheld the judgment of the High Court. It held that:-

(i) It did not have the power to declare the Additional Award a nullity; and that
(ii) The Arbitrator had breached the rules of natural justice by not giving the Plaintiff an opportunity to be heard, resulting in real or actual prejudice to the Plaintiff.

As such, the Additional Award was set aside, in accordance with the High Court’s original holding.
Nullity of awards

In finding that the Court did not have the power to declare the Additional Award a nullity, the Court of Appeal examined the legislative intent and policy behind the Arbitration Act.

(i) S47 states that the Court shall not have jurisdiction to interfere with an arbitral award except where provided in the Act.

(ii) This provision seeks to achieve a degree of certainty in awards, which would be undermined if the Court retained a concurrent ‘supervisory jurisdiction’ over arbitral proceedings.

(iii) Therefore, in situations expressly regulated by the Act, the Court should only intervene where provided by legislation.

However, the situation raised by the Plaintiff had been expressly provided for under s48(1)(a)(v) of the Act, which allows the Court to set aside an award if the arbitral procedure is not in accordance with the parties’ agreement or with the Act. There was thus no further basis for finding that there was any residual jurisdiction allowing the Court to make a declaration as to the validity of the Additional Award.

Breach of natural justice

The Court of Appeal upheld the High Court's finding that the Additional Award should be set aside on the grounds that there was a breach of natural justice.

However, not every breach of natural justice will result in the award being set aside. The breach must be connected to the making of the award, and must have prejudiced the rights of the complainant.

The Court here considered the threshold of prejudice that must be crossed before the Court will intervene to set aside an award, in the context where the breach of natural justice consists of the complainant not being given an opportunity to be heard.

(i) The inquiry is whether the breach of natural justice was merely technical and inconsequential or whether the arbitrator was denied the benefit of arguments or evidence that had a real chance of making a difference to his deliberations.
(ii) Where there is no prospect that the material would have made any difference because it lacked any legal or factual weight, then it could not be said that the complainant has suffered actual or real prejudice.

Here, the Plaintiff should have been given an opportunity to respond to the Defendant’s request for the Additional Award. By rendering the Additional Award three days after the request, before the Plaintiff had a chance to respond, the Arbitrator had breached the rules of natural justice.

This breach of natural justice resulted in real or actual prejudice to the Plaintiff, as it was deprived of its right to be heard on both jurisdictional and substantive issues. The Court held that the arguments the Plaintiff may have made could reasonably have affected the outcome of the Arbitrator’s decision.

Therefore, the Additional Award was set aside.

**Concluding Words**

The Court of Appeal highlighted that “it is never in the interest of the Court, much less its role, to assume the function of the arbitral tribunal”. This perhaps exemplifies the Singapore Court’s position that it will not interfere with arbitral proceedings unless it is absolutely necessary, either to aid in enforcement or to correct clear procedural or legal errors. In this sense, the Court can be seen to support the strength and function of Singapore’s arbitral system, rather than seeking to control or supervise it.

It was held here that the Court does not maintain any supervisory of concurrent jurisdiction over arbitral proceedings beyond what is specified in legislation, further demonstrating the Court’s stand on non-intervention. This can also be seen from the high threshold to be met before the Court will intervene to set aside an award based on breaches of natural justice.

Arbitration exists as an alternative to litigation, and as a result, it is important to maintain a degree of independence between the two systems. The litigation system should not exist as a sort of appellate court to the arbitral process. As arbitration is based on an agreement between the parties to confine their disputes to the arbitral system, the Court will seek to honour that agreement as far as possible.
Contacts

Chong Yee Leong  
Partner  
D (65) 6232 0232  
F (65) 6428 2053  
yee.leong.chong@rajahtann.com

Soh Lip San  
Partner  
D (65) 6232 0228  
F (65) 6428 2038  
lip.san.soh@rajahtann.com

Please feel free to also contact the Knowledge and Risk Management Group at eOASIS@rajahtann.com

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