



JONES DAY
COMMENTARY

IMPEACHING AN ARBITRAL AWARD IN THE SINGAPORE HIGH COURT—NATURAL JUSTICE

The sanctity of arbitration proceedings and awards was again preserved by the Singapore High Court in its decision in *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] SGHC 186. The tone of the judgment was established in the very first sentence of the introductory paragraph when Chan Seng Onn J stated, “[h]owever good or bad in the eyes of a party, the decision of an arbitral tribunal with the requisite jurisdiction is final and binding.” What followed was an instructive analysis of the principles of natural justice in a case that exemplified the difficulty in separating the “genuine challenges” from attempts to massage unhappiness at an arbitral outcome into a ground for challenging an award under the International Arbitration Act (Chapter 143A) (the “IAA”).

The case involved an attempt by TMM Division Maritima SA de CV (“TMM”) to set aside an arbitral award made in respect of a dispute that arose out of the sale and purchase of two secondhand vessels. TMM argued that pursuant to s24(b) of the IAA, the award breached the rules of natural justice

prejudicing TMM and determined issues that were beyond the scope of the submission to arbitration.

CURIAL SCRUTINY

The Court accepted that when a challenge against an award is brought, it has a duty to hear the challenge—the IAA and the Model Law both require this. In this instance, the Court recognized that it was being asked to “review the actions or inactions of the arbitral tribunal” and while, on occasion, this may require the Court to refer to and examine the evidence, this did not mean that the Court must always “sift through the entire record of the arbitral proceedings with a fine-tooth comb.” Citing the Singapore Court of Appeal judgment in *Soh Beng Tee & Co v Fairmount Development Pte Ltd*, the Court reiterated that there is a policy of minimal curial intervention in the arbitral process and that courts should not “nit-pick” at the award.

THE RULES OF NATURAL JUSTICE

The Court recognized that natural justice requires a party to be afforded an opportunity to be heard and to be heard without bias. However, the judge acknowledged that many of the practical questions defining the limits of these principles—such as whether parties get to respond to every single argument raised by the other side, or whether a tribunal needs to address every argument raised and explain its reasons for accepting or rejecting them—remain unanswered as a matter of Singapore law. While the court in *Soh Beng Tee*, after summarizing decisions from a range of Commonwealth countries, provided broad guidelines, Chan Seng Onn J believed that natural justice ultimately depended upon the circumstances of the case and that the test of when natural justice has been impinged is inherently vague. Nevertheless, Chan Seng Onn J set out the content and scope of natural justice in the context of the four requirements relied upon by TMM in its submissions, which are identified in the subheadings following.

Duty Not to Look Beyond the Submissions. The Court was of the view that an arbitral tribunal should be free to determine the dispute on the basis of a principle or premise that, although not directly raised by either party, is reasonably connected to an argument that was in fact raised. Arbitrators should not be so constrained as to adopt in their conclusions only those arguments raised by the parties. In this particular case, TMM had argued that a clause relating to the sale and purchase agreements was a condition or innominate term. The Tribunal had instead decided that the clause was a collateral warranty. This was not a breach of natural justice in the Court's view.

Duty to Deal with Every Argument Presented. In determining the scope of the arbitrator's duty to address each argument raised by the parties, Chan Seng Onn J referred to the decision in *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2010] 1 SLR 733, where it was decided that the arbitral tribunal need only ensure that essential issues are dealt with and does not need to deal with each point made by a party. Quoting Prakash J.'s judgment in *SEF Construction*, the Court confirmed that “[n]atural justice requires that the

parties should be heard; it does not require that they be given responses on all submissions made.” Again, the Court decided that TMM's primary issue was that the arbitrator had misapplied the law on repudiatory breach with respect to the sale and purchase agreements, and that even if this error of law were made, it did not justify setting aside the award. The Court stated that “[i]t cannot be the law that every time there is an error of law, the arbitral tribunal must be taken to have ignored the submissions of the party which is relying on that error.”

Duty to Attempt to Understand the Submissions. Chan Seng Onn J agreed with the general proposition that in order to ensure that the right to be heard is upheld, a tribunal must at least attempt to comprehend the parties' arguments on the essential issues. However, this was subject to the caveat that the inquiry should not be determined solely by whether or not the ultimate decision is “explicably” linked to the critical issues and arguments. This situation was distinguished from one where a tribunal completely fails to have regard to the evidence presented and submissions of parties in arriving at its decision. Therefore, a breach of the rules of natural justice has not occurred in circumstances where a tribunal, despite attempting to comprehend the submissions, fails to comprehend them or comprehends them erroneously, and as a result comes to a decision that could be characterized as “inexplicable.” In the Court's view, “[n]atural justice only protects the parties' right to be heard ... [it] does not extend to functioning as a guarantee that the arbitral tribunal will comprehend or appreciate the parties' submissions and endorse the reasonableness, cogency and appeal of any party's arguments.”

Duty to Give Reasons and Explanations. In a general statement of the law relating to an arbitral tribunal's duty to give reasons, Chan Seng Onn J referred to Art 31(2) of the Model Law, which, although it refers to such duty, does not go so far as to define the duty. While noting a lack of jurisprudence on this point in Singapore, Chan J stated that generally, the inadequate provision of reasons by an arbitral tribunal is a mere error of law. It is well established that the Court does not normally intervene in an award under the IAA on the basis of errors of law alone, so it must follow

that an allegation of inadequate reasons and explanations is therefore generally not capable of sustaining a challenge against an award. Questions of “adequacy” immediately suggest the presence of a spectrum with no reasons at one end and cogent and comprehensive reasoning at the other. The Court suggested that where an arbitral decision is completely lacking, there may be scope for the courts to intervene. In order to provide some guidance on when curial intervention is justified, Chan Seng Onn J referred to the *court’s* duty to give reasons and was of the view that this was an instructive parallel for arbitrations. The crux is “whether the contents of the arbitral award taken as a whole inform the parties of the bases on which the arbitral tribunal reached its decision on the material or essential issues.” In this case, the Court decided that the arbitrator, in crystallizing the parties’ cases on the key issues and setting out his conclusions on the construction of the relevant contractual documents, had satisfied the threshold test for the minimum standard of reasons required under the Model Law, and therefore the award could not be set aside on this ground.

CONCLUSION

The Court found no breach of the rules of natural justice and stated that where a challenge to an arbitral award is founded on a breach of natural justice, the Court will intervene where a breach is “demonstrably clear on the face of the record without the need to pore over thousands of pages of facts and submissions.” The Court will not intervene where such a breach is based on missteps that are “arid, hollow, technical and procedural.”

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com.

Matthew J. Skinner

Singapore

+65.6233.5502

mskinner@jonesday.com

Martin S. King

Singapore

+65.6538.3939

mking@jonesday.com