

Scope of power to correct awards—Article 27 of the LCIA Rules 1998 (Mobile Telecommunications Co KSC v HRH Prince Hussam Bin Abdulaziz Al Saud)

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Arbitration analysis: The respondent to an arbitral award (Prince Hussam) applied to set aside an extension of time granted on the papers by Bryan J under section 79 of the Arbitration Act 1996 (AA 1996). The extension was granted to enable the arbitral tribunal to issue a corrective award under Art 27 of the London Court of International Arbitration (LCIA) Rules 1998 (LCIA Rules 1998). Prince Hussam argued that the order extending time should be set aside because the corrective award issued by the tribunal amounted to interpretation, rather than correction, of the award and thus fell outside the scope of LCIA Rules 1998, art 27. Mr Justice Jacobs, in the Commercial Court, dismissed the application, holding that, although any English reader would have understood the award as carrying an obligation to make the payment to which the claimant (MTC) was entitled, nevertheless there was an error in the award, on the basis that wording had been omitted which caused the award to be read in a manner contrary to the tribunal's intention. Written by Patrick Dunn-Walsh, barrister at Twenty Essex, who appeared for MTC with Thomas Raphael QC.

Mobile Telecommunications Co KSC v HRH Prince Hussam Bin Abdulaziz Al Saud [\[2019\] EWHC 3109 \(Comm\)](#)

What are the practical implications of this case?

The case affirms the pragmatic decision of Knowles J in *Xstrata Coal Queensland Pty Ltd v Benxi Iron & Steel (Group) International Economic & Trading Co Ltd* [\[2016\] EWHC 2022 \(Comm\)](#), [\[2016\] All ER \(D\) 48 \(Aug\)](#) as to the scope of a tribunal's powers to issue corrective awards under LCIA Rules 1998, art 27. In particular, the case illustrates that the power to correct under LCIA Rules 1998, art 27 is not confined to errors on the face of the award, but extends to circumstances where, despite the meaning of the award being objectively clear to an English lawyer, that award has nevertheless been interpreted contrary to the tribunal's intention.

What was the background?

The application arose from an arbitral award under which the tribunal held that MTC was entitled to a sum of over US\$500m from Prince Hussam. After the award was handed down, Prince Hussam sought to re-litigate the same issues in Saudi Arabia, in response to which English courts granted anti-suit relief ([\[2018\] EWHC 1469 \(Comm\)](#), [\[2018\] All ER \(D\) 119 \(Jun\)](#)) and, subsequently, made a committal order against him ([\[2018\] EWHC 3749 \(Comm\)](#)).

However, when MTC sought to enforce the award in Saudi Arabia, the Riyadh court declined enforcement, on the basis that the award did not explicitly state that Prince Hussam was obliged to pay the sum in question to MTC. Upon MTC's urgent application, Bryan J granted the tribunal an extension of time (to issue a corrective award) on the papers under of [AA 1996, s 79](#). The tribunal duly issued awards correcting their prior awards and including additional wording (to the extent that more was required) spelling out further that Prince Hussam was indeed obliged to pay the sums in question.

Prince Hussam alleged that, on a proper reading of LCIA Rules 1998, art 27, the tribunal did not have a power to issue its corrective awards, on the ground that they amounted to an interpretation of its earlier award, rather than a correction. Prince Hussam further argued that, insofar as Knowles J's decision regarding the scope of LCIA Rules 1998, art 27 in *Xstrata* required a contrary conclusion, that decision was wrong and should be departed from.

What did the court decide?

Jacobs J rejected Prince Hussam's application. LCIA Rules 1998, art 27 conferred a power to correct 'to correct in the award any errors in computation, clerical or typographical errors or any errors of a similar nature', and the judge held that the correction sought fell 'fairly and squarely' within the scope of that provision. It was made in order to better express what was very obviously intended. This was not a request for interpretation, which was an elastic term, and there was an error 'of a similar nature' within LCIA Rules 1998, art 27 because, although the proper interpretation of the award was that the defendant was obliged to make the payment to which the claimant was entitled, nevertheless there was an error in that the omission of additional technical wording meant that the award could be, and had been, read contrary to the tribunal's intention.

As the judge explained at [28], the common link between the named errors in the Article was that they were all 'examples of things where the tribunal has not made an error in its decision and is seeking to rewrite it, but where there has been an error of expression'. On that basis, the judge held that 'the error in this case, where there is no doubt as to what the tribunal intended, is an error of a similar kind to those which have been listed'.

Further, as to *Xstrata*, Jacobs J held that, as a matter of judicial comity, he would follow the decision of Knowles J unless there were cogent reasons for not following it. Jacobs J was not so persuaded. He considered that Knowles J had come to a very sensible decision as to the ambit of LCIA Rules 1998, art 27 and that this provided an additional reason why it was inappropriate to set aside the order of Bryan J.

Case details

- Court: Commercial Court, Queen's Bench Division, Business and Property Courts of England and Wales, High Court of Justice
- Judge: Mr Justice Jacobs
- Date of judgment: 8 November 2019

Patrick Dunn-Walsh is a barrister at Twenty Essex, who appeared for MTC with Thomas Raphael QC. If you have any questions about membership of LexisPSL's Case Analysis Expert Panels, please contact caseanalysis@lexisnexis.co.uk.

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