

Application for correction of errors in Award does not automatically extend time limit for appeal

In the case of *Daewoo Shipbuilding v Songa Offshore* the Commercial Court had to consider an important issue on which different views have been expressed by the courts in previous cases. The case concerned an appeal against a London arbitration award under a contract for construction of two semi-submersible drilling rigs. After considering the previous case law the judge came down firmly in favour of a robust interpretation of the relevant provisions of the Arbitration Act 1996, with the result that the shipyard's challenge to the award was held to be out of time and was summarily dismissed.

Under section 70 of the Arbitration Act the time limit for any application for permission to appeal against an arbitration award (or to challenge it on procedural or jurisdictional grounds) is 28 days from the date of the award. However, the section also states that any party applying for permission to appeal must first pursue any available arbitral appeal process or any request for correction of the award under section 57 (which enables the arbitral tribunal itself to correct clerical errors or deal with any omissions or ambiguities in the award).

Section 70 expressly states that the time limit of 28 days runs from the date of the award or the date of notification of the result of "any arbitral process of appeal or review" but there have been varying opinions as to whether this includes an application for correction under section 57. In the present case, the shipyard had applied under section 57 for correction of four errors in the award, which the judge described as "classic clerical and typographical errors ... not connected in any way, shape or form with [the yard's] subsequent appeal."

This application was made 17 days after the date of the award, and the tribunal issued a memorandum of correction 27 days after the date of the award. About three weeks later, the shipyard issued an application to the court for permission to appeal under section 69 of the Act. The other party (the buyer of the rigs) claimed that this was out of time, and the judge agreed. He accepted that there may be cases in which an error or ambiguity needs to be corrected before the party can properly assess whether there are grounds for an appeal, and in such cases the time limit should not run until the section 57 process is completed. However, he rejected the shipyard's argument that any application under section 57 should automatically extend the time limit. This would allow parties to frustrate and delay the arbitral process by applying for correction of trivial errors, which would undermine the ethos of the Act and the important principles of speed and finality in arbitration. In the judge's view, the correct interpretation of section 70 was that if there is an error or ambiguity which can be corrected under section 57 and this is material to the potential appeal, the section 57 procedure must be pursued first, and in such a case the time limit is extended to enable that to take place. However, if the alleged error is immaterial or irrelevant, it is not a bar to issuing an application to challenge the award and the normal 28 days' time limit therefore applies.

The judge also commented that if in doubt, the applicant could apply for an extension of time before the time limit expired, and if the section 57 application was shown to be material to the potential appeal an extension should be granted (or indeed agreed by the other party).

In the present case, although the shipyard also applied in the alternative for an extension of time, the judge found that there was no real justification for its failure to apply within time, and the application was rejected.

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