

Title:

ICC Award No. 1930, YCA 2001, at 181 et seq.



Table of Contents:

NETHERLANDS

NETHERLANDS ARBITRATION INSTITUTE

VI. LEX ARBITRI

VII. INTEREST

Content:

[181](#)

NETHERLANDS

NETHERLANDS ARBITRATION INSTITUTE

Final award in case no. 1930 of 12 October 1999

Arbitrators:

Martin Hunter (President); Albert Jan van den Berg; Jan Klaassen

Parties:

Claimant: Development organization (Netherlands)

Defendant: Development organization (Asian country)

Place of arbitration:

London, England

Published in:

Unpublished

Subject matters:

- prescription period for claims
- contractual annulment due to deceit/error
- compensatory damages for negative publicity
- lex arbitri

- assessment of interest

[...]

Page: 194

[...]

VI. LEX ARBITRI

[44] "The parties made an express choice of Dutch law to govern their Cofinancing Agreements.... However, these agreements were silent both as to the place of arbitration and on the law governing the arbitration itself (lex arbitri). Accordingly, under Art. 22 of the [NAI] Rules it was the task of the Tribunal to determine the place of arbitration....The Tribunal determined that the place of arbitration (the juridical seat) would be London, England, although the hearings and meetings could be held elsewhere.

[45] "It follows that the Tribunal will apply English conflict of rules to determine the law that governs the arbitration itself and the conduct of the proceedings (lex arbitri). In the absence of an express choice by the parties these rules in turn point to the law of the forum. Thus the Tribunal determines that the lex arbitri is English law."

VII. INTEREST

[46] "Under English law the awarding of interest is classified as a procedural matter, because it involves the question of the power of arbitral tribunals to award a particular remedy.

[47] "As this arbitration was commenced after 31 January 1997 the [English Arbitration Act 1996](#) is applicable to these proceedings."

[48] After citing Sect. 49 of the [English Arbitration Act7](#) the Arbitral

Page: 195

Tribunal continued as follows: "Under the above provision the Tribunal has a wide discretion with regard to its award in respect of interest.

[49] "The Tribunal further takes note of Art. 119 of Book 6 of the [Dutch Civil Code](#) (the law applicable to the merits of the case) [...] and Art. 120 of Book 6 of the Dutch Civil Code.⁸[...]

[50] "In assessing interest, the Tribunal takes account of the following factors:

(1) The currency of account between the parties was Dutch guilders, and all payments by claimant to defendant were made in Dutch currency.

(2) Claimant received its own funds from contributors in Dutch guilders.

(3) The law applicable to the contract between the parties is Dutch law.

(4) Claimant's claim in respect of interest was for interest at the statutory rate applicable in The Netherlands, and this was not contested by defendant.

[51] "Accordingly, the Tribunal awards that, pursuant to Arts. 119 and 120 of Book 6 of the [Dutch Civil Code](#), defendant shall pay to claimant interest, annually compounded, at the statutory rate applicable in The Netherlands, as amended from time to time."

[...]

⁷Sect. 49 of the [English Arbitration Act 1996](#) reads: "(1) The parties are free to agree on the powers of the tribunal as regards the award of interest. (2) Unless otherwise agreed by the parties the following provisions apply. (3) The tribunal may award simple or compound interest from such dates, at such rates, and with such rests as it considers meets the justice of the case— (a) on the whole or any part of any amount awarded by the tribunal, in respect of any period up to the date of the award; (b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment. (4) The tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs). (5) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal. (6) The above provisions do not affect any other power of the tribunal to award interest."

⁸Art. 119 Book 6 [Dutch Civil Code](#) reads: "1. Compensation owed for delay in the payment of a sum of money consists of legal interest on that sum over the period that the debtor has been in default of payment. 2. At the end of every year, the amount on which legal interest is calculated is increased by the amount owed over that year. 3. Stipulated interest which is higher than that which would be owed pursuant to the preceding paragraphs applies instead of legal interest, after the debtor has come into default." Art. 120 Book 6 [Dutch Civil Code](#) reads in relevant part: "1. Legal interest rates are fixed by regulation. Legal interest accumulating at the time of the coming into force of a new interest rate fixed by regulation is, as of that time, calculated according to the new rate."

Referring Principles:

VII.6 - Duty to pay interest

VII.7 - Right to charge compound interest

XIII.3.2 - Determination of rules of procedure