

**ENGLISH HIGH COURT DISMISSES SECTION 67/68 ARBITRATION
CHALLENGE IN NIGERIAN ALLEGED BRIBERY CASE**

Interprods Ltd v De La Rue International Ltd [2014] EWHC 68 (Comm)

Introduction

On 27 January 2014, the English High Court released its judgment in *Interprods Ltd v De La Rue International Ltd* [2014] EWHC 68, in which the High Court rejected the applicant's challenges to an LCIA arbitration award.

Background

The applicant, Interprods, was a Nigerian company which acted as an agent and distributor in Nigeria for De La Rue, the well-known supplier of bank notes, in return for the payment of commission. On 24 March 2011, the parties had a meeting at which, according to De La Rue, Interprods' representative stated that the commission paid to it would be used to bribe and corrupt Nigerian officials.

De La Rue terminated the agency agreements between the parties on 21 September 2011 and, on 23 November 2011, commenced an LCIA arbitration seeking a declaration that it was entitled to and had terminated the agency agreement and that it was not obliged to pay any further commission to Interprods.

In an award dated 3 July 2013 the arbitrator held that Interprods' representative had stated that he needed the commission to pay bribes, and that accordingly De La Rue had been entitled to terminate the agency agreement and was not obliged to pay any otherwise outstanding commission to Interprods.

Interprods challenged the award on two grounds:

- The arbitrator lacked jurisdiction to make the award in question pursuant to section 67 of the Arbitration Act 1996
 - the allegation that Interprods' representative admitted bribery (which would be a criminal offence under the law of both England and Nigeria) did not arise out of or in connection with the Agency Agreements, and therefore was not covered by the arbitration agreement in the agency agreement, and
 - the scope of Interprods' submission to arbitration was limited by the express distinction made by it in its letter of 15 November 2011 between issues arising out of non-fulfilment by De La Rue of its obligations under the Agency Agreements, and the allegations of bribery
- There were serious irregularities in the making of the award pursuant to section 68 of the Arbitration Act 1996:

- the arbitrator's decision to conduct a telephone hearing was a breach of his duty to act fairly and impartially between the parties and Interprods suffered substantial injustice as it was deprived of an oral hearing at which it could test the evidence of De La Rue's witnesses.
- the arbitrator, who had been appointed by the LCIA, had been appointed arbitrator in two other cases where one of the parties was represented by De La Rue's lawyers, and therefore the arbitrator was unable to act impartially between the parties in breach of section 33 of the Arbitration Act 1996
- at a hearing, the arbitrator failed to put any significant questions to De La Rue's witnesses or to test their evidence by reference to Interprods' representative's statement; uncritically accepted the evidence of De La Rue's witnesses; and made no mention of Interprods' representative's witness statement and gave no reason for rejecting it.

Judgment

The High Court dismissed all challenges to the award.

Section 67 challenge

Mr Justice Teare restated the well-accepted premise that arbitration clauses should be construed upon the assumption that the parties, as rational business men, were likely to have intended that any dispute arising out of the relationship into which they had entered was to be decided by the same tribunal unless the language of the clause made it clear that certain questions were intended to be excluded from the tribunal's jurisdiction. It was clear that the present dispute – De La Rue's position being that it had lawfully terminated the agency agreements and was not obliged to pay any further commission - was clearly covered by the arbitration clause. This conclusion was not affected by the November correspondence.

Section 68 challenge

Mr Justice Teare reiterated the comments of Mr Justice Popplewell in *Terna Bahrain Holding Company v Ali Marzook Al Bin Kamil Al Shamsi and others* [2012] EWHC 3283, which emphasised that the threshold for a section 68 challenge was a high one. In the present case, that threshold was not satisfied:

- the decision to conduct a telephone hearing was a robust but fair decision;
- the allegations of bias did not meet the fair-minded observer test – that “*the fair-minded and informed observer, having considered the relevant facts, would conclude that there is a real possibility that the tribunal was biased*” – and in the circumstances, only the most suspicious of observers might conclude that there was a possibility of such bias;
- the criticisms of the arbitrator's conduct in relation to the witnesses and statements was unjustified, and even if there was justifiable criticism, the arbitrator's conduct

was not “*so far removed from what could reasonably be expected from the arbitral process that justice call[ed] out for it to be corrected*”.

The full judgment can be found at

<http://www.bailii.org/ew/cases/EWHC/Comm/2014/68.html>

11th March 2014