



Hearings can mean delays

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AT FIRST glance, the case of *Pace Shipping Co Ltd v Churchgate Nigeria Ltd* (The Pace) [2010] LLR Plus 4 is a welcome reminder that the courts will not entertain challenges to arbitrators' findings of fact. There are, however, possibly wider implications.

The dispute centred on claims of damage to and short delivery of a cargo of bagged rice carried on the applicant's vessel from Thailand to Nigeria in 2004. One of the issues concerned title to sue. In the arbitrators' first award of September 2007 it was held that the respondent Churchgate, represented by Bentleys, did not have title. However, following Churchgate's successful appeal on a point of law, the question was remitted back to the arbitrators. In a further award of October 2008, a majority of the arbitrators decided that in fact Churchgate did have title.

Pace subsequently sought to challenge the further award pursuant to sections 68, 69 and 70 of the Arbitration Act. All three grounds of appeal were dismissed, but it was the use of section 68 that has prompted this discussion.

A s.68 challenge is made on the basis of an alleged serious irregularity in the award. Specifically, Pace argued that following the second award the majority arbitrators failed to provide requested clarification or further reasons regarding a suggested ambiguity and that these failures amounted to serious irregularities. The 'ambiguity' largely concerned findings of fact regarding payment for the goods.

Mr Justice Teare rejected the notion that there was any serious irregularity in the award and accordingly rejected the application to vary or remit the award for further consideration by the tribunal. He did so on the basis that "the conclusion of the majority is not ambiguous... the reasoning is explicable and makes sense".

He also added a useful summary of the court's approach to arbitration awards: that they should be read "in a fair and reasonable way without minute textual analysis or a meticulous legal eye endeavouring to pick holes, inconsistencies and faults".

In rejecting the appeal, the court refused to allow a challenge, which it has been suggested was tantamount to asking the arbitrators to reconsider the weight given to the evidence, or asking them to reconsider findings of fact which did not accord with the applicant's case. The court has consequently upheld the principle that an appeal under s.68 should not be used as an indirect route to challenge the arbitrators' assessment of the evidence.

There is, however, a less welcome feature of the case. Challenges to awards under s.69 (on points of law) are usually dealt with on paper, without a hearing. This acts as a filtering stage, providing for speedy and efficient determination of a challenge without the cost of an oral hearing unless there are thought to be sufficient grounds for the challenge on a point of law to proceed.

Notwithstanding what the judge called "the unusual circumstances of this case", The Pace seems to offer tacit support for the increasingly established practice of holding a hearing whenever there is a combined appeal under s.67, s.68 and s.69. Given a little ingenuity, s.68 procedural challenges can often be raised to accompany what is in reality a s.69 challenge on a point of law, resulting in the majority of cases it seems with an oral hearing.

This has wider implications for parties that arbitrate in London. In particular, the practice of holding oral hearings following a combined appeal from an arbitration award will not only lead to an increase in legal costs but will also often delay final determination and enforcement of claims.

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