

[Deciding Court]

Tokyo District Court

[Date of Decision]

13 June 2011

[Case No.]

2009 (arbitration) No.6

[Source]

Hanrei Jiho No.2128 p.58, LEX/DB no.25473502

[Summary of Facts]

The following dispute occurred between counterparty Y, a U.S. corporation with a patent in Japan regarding blast furnace slag (technology to use in glass manufacturing the slag which is a by-product occurring from blast furnace upon producing steel) (hereinafter, the “Patent”) and claimant X, a Japanese corporation which has been performing joint venture business regarding the manufacture and sales in Japan of blast furnace using the Patent.

X did not pay for technical service fees from April 2005 onwards and requested for a review of the technical service fees, and Y was responding to such discussion. However, an adjustment could not be reached between the parties, and on January 16, 2007, X gave notice to Y of the invalidity or termination of the contract. On August 16, 2007, Y filed a lawsuit to the Hawaii circuit court on such grounds as the failure of payment of technical service fees, etc. and default of the contract. However, the said court issued an order to temporarily suspend the lawsuit until the results using arbitration proceedings came out, since there existed an arbitration agreement in the contract between X and Y.

On December 16, 2008, Y filed for arbitration against X to the Japan Commercial Arbitration Association, and the arbitral tribunal granted an arbitration award recognizing the claims of payment, etc. of technical service fees by Y to X (hereinafter, the “Arbitral Award”).

In response to this, X filed a petition against the counterparty to set aside the Arbitral Award, stating that the Arbitral Award contained events to set it aside under Article 44 Paragraph 1 Item 8 of the Arbitration Act.

The issue in this case was whether, although the technical service fees were not

recognized as the distribution of interests of the joint venture business in the arbitration proceedings, the fact that the Arbitral Award granted an arbitral award stating this as an undisputable fact fell under the events to set aside the arbitral award under Article 44 Paragraph 1 Item 8 of the Arbitration Act.

X claimed that the nature of the technical service fees was an issue that formed the major premise of the Arbitral Award, and if the arbitral tribunal had performed appropriate fact-finding regarding the nature of the technical service fees, a different conclusion would have definitely been reached, and the Arbitral Award unduly damaged the interests of the claimant's defense and interfered with the guarantee of due process or rights to the court of the claimant, and violated public policy in Japan, and it should be set aside in accordance with Article 44 Paragraph 1 Item 8 of the Arbitration Act.

On the other hand, Y claimed that disputing facts not disputed in the arbitration proceedings in the proceedings to set aside the arbitration award on the grounds of procedural violation amounts to recognizing a redoing of the fact-finding determined by the arbitral award and significantly undermines the significance of the arbitral award, and also, with respect to the failure of a defense not denied in the arbitration proceedings or not claimed in the answer, it is without saying that such party should bear liability, and in light of the nature of one-time resolution of the arbitral award, it is not appropriate to recognize a redoing.

[Summary of Decision]

Petition upheld, arbitral award set aside

I “Since the arbitration system is a dispute resolution system with the substance being the autonomous intent between the parties, and the court is not permitted to excessively interfere (please refer to Article 4 of the Arbitration Act).

However, since the arbitral award is granted mandatory effect of dispute resolution by the country, namely, the same effect as a final and binding judgment (Article 45 Paragraph 1 of the said Act), it is not rendered effective unlimitedly and certain interference by the court is provided in the laws, such as providing the requirements for the effect above to be recognized for the arbitral award, rendering it possible to set aside the arbitral award by the court in cases where the effect above should not be recognized (Article 44 of the said Act), and providing the cases where it may not be enforced (Article 45 Paragraph 2 of the said Act).”

II “With respect to the procedures, while the Arbitration Act renders it possible to be

determined by the agreement of the parties from the viewpoint of party autonomy including the rules for arbitration proceedings followed by the arbitral tribunal (main text of Article 26 Paragraph 1 of the said Act), since it is necessary to ensure that arbitration is operated as an appropriate and fair dispute resolution system from the viewpoint of guarantee of due process, it provides for the guarantee of fair treatment of the parties and sufficient opportunity of explanation of the matter (Article 25 of the said Act), and limits waiver of right of objection only to those which are not related to public policy (Article 27 of the said Act), and procedural rules which the parties are able to determine by agreement are only permitted to the extent that they do not violate the provisions related to public policy (proviso of Article 26 Paragraph 1 of the said Act).”

“According to the provisions of the Arbitration Act regarding procedures and their intent, it is interpreted that, regardless of what the governing laws of the arbitration procedures are, if the arbitration procedures are contrary to procedural public policy of our country, an arbitral award granted pursuant to such procedures would be contrary to the basic legal order of our country as the contents of the arbitral award would not carry the procedures conforming to procedural public policy, and the mandatory effect of dispute resolution of the country cannot be affirmed, and it would fall under an event to set aside the arbitral award under Item 8 of Article 44 Paragraph 1 of the Arbitration Act”

III “To grant an arbitral award without determining material matters impacting the text of the arbitral award in relation to allegations and evidence appropriately submitted by the parties in procedural terms is, for the parties requesting dispute resolution by receiving determination on allegations and evidence with impact on the text, equivalent to not receiving a determination, and this also impairs the trust towards arbitration. Therefore, in such cases, it is reasonable to interpret that it violates the procedural public policy of Japan as a violation of the ideals of due process of arbitration (please refer to Article 33 Paragraph 1 Item 9 of the Code of Civil Procedure).”

“So long as such facts are material matters impacting the main text of the arbitral award, it is interpreted that to grant an arbitral award by rendering facts disputed between the parties as undisputed facts violates the procedural public policy of Japan”

IV “It is reasonable to interpret that [the arbitral tribunal] recognized that [the fact] that technical service fee is a distribution of interests gained from joint venture business is an undisputable fact.”

However, “In the arbitration proceedings, X raises as an issue the extinguishment of the Patent in relation to the payment obligations of the technical service fees, and in X’s

final written allegation at latest, X claimed that the technical service fees were license fees, and disputed the nature of the technical service fees.”

“Under the laws of Japan, it is considered that to limit the use of technology after the patent rights have extinguished or to impose payment obligations of enforcement fees towards the enforcement of technology fall under unfair trade practices and is highly likely to violate the Anti-Monopoly Act, and since there is room for an act in violation of the Anti-Monopoly Act to become invalid due to violation of public policy, the nature of the technical service fees falls under a material matter impacting the text of the arbitral award

Therefore, this arbitral award has been granted without making a determination by rendering the nature of technical service fees which is a material matter impacting the text of the arbitral award and which is disputed between the parties as an undisputed fact, and this violates the procedural public policy of Japan, and falls under Article 44 Paragraph 1 Item 8 of the Arbitration Act.”