[Deciding Court]
Osaka District Court

[Date of Decision]
17 March 2015

[Case No.]
2014 (arbitration) No.3

[Source]
Hanrei Jiho No.2270 p.74

[Summary of Facts]

X1 and X2 (X) is a company with the objective of performing sales of air conditioning equipment, with its head office located in Texas, U.S.A. Y1 is a company with the objective of performing manufacture and sales, etc. of lighting machinery equipment. Y2 is a company with its head office located in Singapore.

Y1 and Y2 (Y) supplied to X air conditioning equipment pursuant to a sales agreement of air conditioning equipment. However, on October 28, 2010, it manifested its intent to X1 to terminate the agreement on sale and purchase, etc. of air conditioning equipment. On June 16, 2011, Y filed a petition to A Arbitration Association requesting for an arbitral award to make a declaration, etc. that Y has not violated any of its contractual obligations in its relationship with X. In response, on August 11, 2011, X submitted a written counterclaim petition requesting for an arbitral award including an order, etc. for compensation of damages, etc., raising such claims as that the termination of the agreement on sale and purchase, etc. of air conditioning equipment by Y was illegal and unlawful.

A Arbitration Association appointed, as an arbitrator of the arbitral tribunal, C who belonged to the Singapore office of law firm B. Before being appointed as an arbitrator by A Arbitration Association, C represented to A Arbitration Association in written form such matters as that it is not aware of any facts with the likelihood of causing due doubt to fairness and independence, and that it is possible that, currently or in the future, the attorneys belonging to B would represent the parties or their affiliates of this arbitration in a case irrelevant to this arbitration (hereinafter, the “Representation”).

On February 20, 2013, when the arbitration was pending, D belonged to the San Francisco office of B to which C belonged. At that time, D was serving as the agent of

E in a class action lawsuit in which E, the wholly owned fellow subsidiary of Y1, and F, the wholly owning parent company of E, were co-defendants (hereinafter, the "Class Action"). However, C did not disclose to the parties to this arbitration the fact that D, who was an attorney belonging to B, was involved in the Class Action. The arbitral tribunal granted an arbitral award continuing the examination with C remaining as the arbitrator, and on August 22, 2014, the parties received this arbitral award (hereinafter, the "Arbitral Award").

X filed a petition to set aside the Arbitral Award, stating that since the fact that D, who belonged to the San Francisco office of B, the law firm to which C, an arbitrator of this arbitration belonged, was serving as the agent of E in the Class Action was a fact causing doubt to the fairness and independence of an arbitrator and should have been disclosed by C, but was not disclosed by C, it was a violation of the disclosure obligation under Article 18 Paragraph 4 of the Arbitration Act (hereinafter, the "Act"), and such violation fell under Article 44 Paragraph 1 Item 6 of the Act.

[Summary of Decision]
Petition dismissed

"There is room to interpret that the fact that D was serving as the counsel of E, which had a capital relationship with Y1, in the Class Action was a fact with the likelihood of causing doubt to the fairness and independence of C as an arbitrator (Article 18 Paragraph 4 of the Arbitration Act and Article 28 Paragraph 4 of the [JCAA commercial arbitration] rules)."

"However, in light of [the circumstances] that (i) while C was an attorney belonging to the Singapore office of B, D was an attorney belonging to San Francisco, and there does not appear to exist any circumstance that there was interaction such as information exchange, etc. regarding the Class Action between both attorneys; (ii) the cases and parties of this arbitration and the Class Action differ and are irrelevant; (iii) C himself was not involved in the Class Action and did not have the opportunity to access information related to the Class Action … … , even if there existed the fact that D, who was serving as the counsel of E in the Class Action, transferred to the San Francisco office of B after C, who was an attorney belonging to B, was appointed as an arbitrator, it cannot be recognized, just by this, that there still exist reasonable grounds sufficient to doubt the fairness or independence of C as an arbitrator (Article 18 Paragraph 1 Item 2 of the Arbitration Act). Therefore, it cannot be said that there existed an event to

challenge C as an arbitrator by such fact, nor can it be recognized that the existence of such fact had an impact upon the conclusion of the Arbitral Award."

"In addition to this, …… upon being appointed as an arbitrator, C" "submitted the Representation" to A Arbitration Association "…… and X did not raise any objection thereto, and it is recognized that X did not particularly view this as an issue even though X could have envisaged in advance that the circumstances such as those above would occur ……. Also taking this into account, even if the failure to disclose the fact above by C fell under a violation of disclosure obligation (Article 18 Paragraph 1 Item 4 of the Arbitration Act [sic]), the defect due to this can be said to be minor."

"In accordance with the above, it should be said that even if the violation of disclosure obligation above by C fell under Article 44 Paragraph 1 Item 6 of the Arbitration Act, it is not reasonable to set aside the Arbitral Award due to this reason (Article Paragraph 6 of the Arbitration Act)."