

ENGLISH HIGH COURT UPHOLDS VALIDITY OF ARBITRATION CLAUSE IN TATA STEEL WORKS CASE

Associated British Ports v Tata Steel UK Limited [2017] EWHC 694 (Ch)

Introduction

In *Associated British Ports v Tata Steel UK Limited* [2017] EWHC 694 (Ch), handed down on 3 April 2017, Rose J held that an arbitration clause in a contract between Tata Steel UK Ltd (“Tata”) and Associated British Ports (“ABP”) was broad enough and certain enough to cover a request by Tata to change the fees it pays due to a “major physical or financial change in circumstances”.

Background

Tata owns a steel works at Port Talbot in Wales, where it is in a long-term contractual relationship with ABP, which owns and operates port facilities used by Tata for importing goods for use at the steel works. Although the relationship between Tata and ABP goes back to 1970, this dispute arises out of the current licence agreement dated 1 March 1995 (“the Licence”).

Clause 22 of the Licence stated “in the event of any major physical or financial change in circumstances... either party may serve notice on the other requiring the terms of this Licence to be renegotiated with effect from the date on which such notice shall be served. The parties shall immediately seek to agree amended terms reflecting such change in circumstances and if agreement is not reached within a period of six months from the date of the notice the matter shall be referred to an Arbitrator”.

In February 2016, Tata gave notice of a “major financial change in circumstances” and requested renegotiation to change its fixed fees. Tata provided details regarding a doubling of imports of steel into Europe, and a quadrupling of imports from China, resulting in a sharp reduction in steel prices causing Tata to restructure its European operations, including a substantial reduction in its workforce. Tata sought, inter alia, a 50% reduction in fixed fees, amounting to £3.5 million per annum.

ABP commenced English court proceedings and applied for declaratory relief that: (1) the licence fee was not within the scope of the arbitration clause; and (2) the arbitration clause was void for uncertainty “any major physical or financial change in circumstances” was too uncertain to create a binding obligation to refer a dispute to arbitration and, further, that there were no (or insufficient) objective criteria to guide an arbitrator in how to amend the Licence.

Tata applied for a stay of the proceedings brought by ABP pursuant to Section 9 of the Arbitration Act 1996.

Judgment

Rose J granted Tata’s application for a stay of proceedings.

Scope of the Arbitration Clause – Rose J held that the setting of fees was within the scope of the arbitration clause. It would require “very clear words indeed” before a clause envisaging potentially extensive revisions of the Licence terms would be construed as excluding such a crucial element of the bargain as the licence fees. The fact that there were other contractual clauses providing for changes to the fees did not lead to a different conclusion, because those clauses envisaged relatively minor adjustments to take account of readily foreseeable changes rather than a “major change of circumstances” as anticipated by the arbitration clause.

Uncertainty – Rose J noted that “each case in which a clause is challenged as being void for uncertainty is to be decided on its own facts”. But, having viewed the authorities, Rose J identified the principle that “the courts should strive to give some meaning to contractual clauses agreed by the parties if it is at all possible to do so”.

Rose J cited with approval the recent statement of Leggatt J in *Astor Management AG v Atalaya Mining plc* [2017] EWHC 425 (Comm) that “The role of the court in a commercial dispute is to give legal effect to what the parties have agreed, not to throw its hands in the air and refuse to do so because the parties have not made its task easy”.

In the instant case, the requirement for the court to perform this role was heightened because it was a case where the relevant contract had already been performed by one or both parties over a period of time – a situation in which the courts were “particularly reluctant to find a clause too uncertain to create an obligation”.

The inclusion of the arbitration clause “strongly indicated” that the parties had not intended, at the time of contract formation, to retain a general freedom to agree or disagree on issues concerning required amendments in line with their perceived interests. The arbitration clause created a binding obligation to refer disputes to arbitration and the proceedings were ordered to be stayed.

Concluding Remarks

In line with the “pro-arbitration” stance of the English jurisdiction, this case serves as a demonstration of how arbitration clauses are generally to be given a broad interpretation.

The fact that the parties had been in a long-term commercial relationship and had been previously performing their contractual obligations was an important factor that made the English courts “particularly reluctant” to find the arbitration clause void for uncertainty.