

Case 4630279062

Court	Circuit type	Case No.	Judgment pronounced	Judgment issued
Riyadh Court of Appeal	Civil	4630279062	–	October 7, 2024

Facts

Based on the transaction registered with this Court under No. [...] on January 16, 2025 (16/7/1446H), submitted by the plaintiff [...] [the claimant in the arbitration], Commercial Registration No. [...], against the defendant [...] [the respondent in the arbitration], Commercial Registration No. [...], concerning an action to annul an arbitral award issued in a dispute arising out of a construction contract.¹

The arbitral award under challenge was rendered on December 19, 2024 (18/6/1446H) by an arbitral tribunal composed of [...], as presiding arbitrator, and [...] and [...] as co-arbitrators. The award concluded as follows:

First: The arbitral proceedings are terminated by agreement of the parties.

Second: The claimant [...], Commercial Registration No. [...], is ordered to pay SAR 111,500 as its share of arbitration fees and expenses, allocated as follows: SAR 50,000 to the arbitrator; SAR 50,000 to the presiding arbitrator; and SAR 11,500 to the secretariat.

Third: The respondent [...], Commercial Registration No. [...], is ordered to pay SAR 136,500 as its share of arbitration fees and expenses, allocated as follows: SAR 75,000 to the arbitrator; SAR 50,000 to the presiding arbitrator; and SAR 11,500 to the secretariat ([...] Establishment).

At a hearing convened on [...] at 09:40 a.m., both parties appeared through their respective counsel. When invited to present his claim, the plaintiff's attorney submitted the statement of claim for annulment, setting out his grounds and requests as follows:

Acting pursuant to a power of attorney on behalf of my client [...], I hereby submit this action.

¹ Identifying information in this judgment has been redacted to protect personal and sensitive data. Editorial insertions in square brackets have been made by the SCCA team for clarity or completeness and do not appear in the original Arabic text.

A contract titled “General Works Construction Contract” was concluded between the first party [...] and the second party [...] on February 18, 2016 (09/5/1437H).

The arbitration agreement is contained in Clause 11 of the contract, which provides:

Any dispute arising from the performance of this contract that is not resolved amicably shall be settled by arbitration in accordance with the provisions of Chapter 20 of the General Conditions of the Contract.

The seat of arbitration was designated as the city of Jeddah, being the domicile of both contracting parties. An arbitral tribunal was constituted as follows: [...], as presiding arbitrator; [...], the arbitrator appointed by the claimant; and [...], the arbitrator appointed by the respondent; with Mr. [...] serving as secretary to the tribunal.

On December 19, 2024 (18/6/1446H), the arbitral tribunal issued its award, ruling as follows:

First: The arbitral proceedings are terminated by agreement of the parties.

Second: The claimant [...], Commercial Registration No. [...], is ordered to pay SAR 111,500 as its share of arbitration fees and expenses, allocated as follows: SAR 50,000 to the arbitrator; SAR 50,000 to the presiding arbitrator; and SAR 11,500 to the secretariat.

Third: The respondent [...], Commercial Registration No. [...], is ordered to pay SAR 136,500 as its share of arbitration fees and expenses, allocated as follows: SAR 75,000 to the arbitrator; SAR 50,000 to the presiding arbitrator; and SAR 11,500 to the secretariat ([...] Establishment).

We were notified of the arbitral award on December 19, 2024 (18/6/1446H). The present action is based on the following grounds:

The arbitral award violates Article 50 (1) (f) of the Arbitration Law, which provides that an action to annul an arbitral award is permissible:

If the arbitration award rules on matters not included in the arbitration agreement. Nevertheless, if the sections of the award relating to matters subject to arbitration can be separated from those not subject thereto, then nullification shall apply only to the sections not subject to arbitration.

The violation arises from the fact that the arbitral tribunal ruled on matters not encompassed within the arbitration agreement, namely the determination of arbitrators' fees. Such fees were neither stipulated in the arbitration clause contained in the contract concluded between the parties nor agreed upon at any stage.

It further became apparent to both parties that the arbitral tribunal had initially fixed its fees at an excessive amount, totaling SAR 992,000, distributed as follows: SAR 400,000 for the presiding arbitrator; SAR 200,000 for one arbitrator; SAR 300,000 for another arbitrator; and SAR 92,000 for the secretary.

The tribunal unilaterally determined its fees and imposed them upon the parties without following the procedure prescribed by law in the absence of an agreement on fees. This constitutes a violation of Article 24 (2) of the Arbitration Law, which provides:

In the absence of an agreement between the two parties to arbitration and the arbitrators regarding arbitrators' fees, the competent court shall decide the matter pursuant to a non-appealable decision. If the arbitrators are appointed by the competent court, said court shall determine their fees.

Furthermore, Article 50 (2) of the Arbitration Law provides:

The competent court considering the nullification action shall, on its own initiative, nullify the award if it violates the provisions of *Sharia* and public order in the Kingdom or the agreement of the arbitration parties, or if the subject matter of the dispute cannot be referred to arbitration under this Law.

Accordingly, the arbitral award is void in respect of the determination of arbitration fees.

Requests:

We therefore request [that the Court issues a] judgment annulling the "First" and "Second" orders in the arbitral award.

Upon presentation of the foregoing to the defendant's attorney, he submitted a memorandum in reply, stating as follows:

The arbitral tribunal constituted to adjudicate the dispute between the parties issued its award in Case No. [...] on December 19, 2024 (18/6/1446H), ruling as follows:

First: The arbitral proceedings are terminated by agreement of the parties, in accordance with Article 41 (1) (a) of the Arbitration Law, for the reasons set out in the award.

Second: The claimant [...], Commercial Registration No. [...], is ordered to pay SAR 111,500 as its share of arbitration fees and expenses, allocated as follows: SAR 50,000 to the arbitrator; SAR 50,000 to the presiding arbitrator; and SAR 11,500 to the secretariat.

Third: The respondent [...], Commercial Registration No. [...], is ordered to pay SAR 136,500 as its share of arbitration fees and expenses, allocated as follows: SAR 75,000 to the arbitrator; SAR 50,000 to the presiding arbitrator; and SAR 11,500 to the secretariat ([...] Establishment).

This award is tainted by nullity, and pursuant to Article 50 (1) (g) and Article 51 (1) of the Arbitration Law, the claimant is entitled to seek annulment on the following grounds.

As to form:

The present action has been filed within the statutory time limit and in accordance with the procedure prescribed under Article 51 (1) of the Arbitration Law. It is therefore admissible in form.

As to merits:

The arbitral tribunal, in the "Second" and "Third" orders of its award, exceeded the scope of the arbitration agreement as set out in Article 11 of the contract concluded between the parties ([...] Hotel Towers Project—General Works Construction Contract). Said article contains no provision whatsoever relating to arbitration fees or expenses.

Article 11 provides:

Any dispute arising from the performance of this contract that is not resolved amicably shall be settled by arbitration in accordance with the provisions of Chapter 20 of the General Conditions of the Contract.

Moreover, Chapter 20, Article 51 (2) of the General Conditions of the Contract addresses the mechanism for the constitution of the arbitral tribunal and does not regulate the determination or allocation of arbitration fees and expenses.

Article 50 (1) (f) of the Arbitration Law provides that an action to annul an arbitral award is permissible:

If the arbitration award rules on matters not included in the arbitration agreement. Nevertheless, if the sections of the award relating to matters subject to arbitration can be separated from those not subject thereto, then nullification shall apply only to the sections not subject to arbitration.

[In the present case,] the arbitral award addressed matters falling outside the arbitration agreement by determining arbitration fees and expenses and imposing them upon the parties, notwithstanding the absence of any agreement in this respect. This constitutes an excess of jurisdiction warranting partial annulment of the award pursuant to the aforementioned provision of the Arbitration Law.

Requests:

Accordingly, we respectfully request that Your Honors rule as follows:

First: Accept the action in form.

Second: Annul the arbitral award issued in Case No. [...] on December 19, 2024 (18/6/1446H), insofar as the tribunal ruled on arbitration fees and expenses, ordering [in its "Second" order] the claimant to pay SAR 111,500 as its share of arbitration fees and expenses, allocated as follows: SAR 50,000 to the arbitrator; SAR 50,000 to the presiding arbitrator; and SAR 11,500 to the secretariat.

There being no further submissions, and the case being ready for adjudication, the Court declared the pleadings closed.

Reasoning

Upon review, consideration, and deliberation, and with reference to Supreme Judicial Council Decision No. 133 dated October 2, 2019 (3/2/1441H), as published in Circular No. 8331 dated December 9, 2019 (12/4/1441H), which confirms this Circuit's jurisdiction to hear arbitration-related disputes, and since the plaintiff's attorney filed the annulment action within the period prescribed under Article 51 of the Arbitration Law, the action is admissible in form.

As to the merits:

Upon the Circuit's review of the arbitral award under challenge and the statement of claim submitted by the plaintiff.

And as the arbitral tribunal awarded arbitration fees to itself in the "Second" and "Third" orders of the award, without any request from either party.

And as the award thereby disregarded the arbitration agreement concluded between the parties, under which the arbitral proceedings ended prior to adjudication on the merits.

The award therefore went beyond the scope of the arbitration claim and was issued by a tribunal exceeding the limits of its mandate.

This constitutes a ground for annulment under Article 50 (1) (f) of the Arbitration Law, [which permits annulment where the arbitral award rules on matters not covered by the arbitration agreement].

Furthermore, the said two orders [the "Second" and "Third"] of the award contain a departure from the principles of Sharia and public policy, as they impose financial obligations without a valid legal or contractual basis and without adequate reasoning, and fail to observe the provisions of Article 24 of the Arbitration Law [regarding arbitration fees].

Accordingly, the Court concludes that the "Second" and "Third" orders of the arbitral award must be annulled, [while the remainder of the award remains unaffected].

Ruling

The Court hereby rules as follows:

First: To accept the annulment action filed by the plaintiff in form and on the merits.

Second: To annul the arbitral award dated December 19, 2024 (18/6/1446H) in part, insofar as it provides:

Second: The claimant [...], Commercial Registration No. [...], is ordered to pay SAR 111,500 as its share of arbitration fees and expenses, allocated as follows: SAR 50,000 to the arbitrator; SAR 50,000 to the presiding arbitrator; and SAR 11,500 to the secretariat.

Third: The respondent [...], Commercial Registration No. [...], is ordered to pay SAR 136,500 as its share of arbitration fees and expenses, allocated as follows: SAR 75,000 to the arbitrator; SAR 50,000 to the presiding arbitrator; and SAR 11,500 to the secretariat ([...] Establishment).

God grants success. May prayers and peace be upon our Prophet Muhammad, and upon his family and companions.