Article 20: ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

Article 20 is designed to serve the same purpose as Article 19 which is to ensure settlement efforts by the parties unimpeded by any fear of later disadvantages in other proceedings. While Article 19 deals with possible functions of the conciliator, Article 20 is concerned with substantive information or views expressed during the conciliation proceedings. It attempts to answer the difficult question to what extent such information should be inadmissible in other proceedings because of its potentially adverse effect on the position of a party.

Article 20 is based on the view that it would go too far to exclude all and everything expressed during the conciliation proceedings. To give only one example, a report about an inspection of goods which no longer exist at the time of the other proceedings should be admissible. Article 20, therefore, limits the scope of the parties’ undertaking by defining certain categories of information as inadmissible.

A party may not rely on or introduce as evidence: views expressed or suggestions made by the other party in respect of a possible settlement; admissions made by the other party; proposals made by the conciliator; the fact that the other party had indicated his willingness to accept such a proposal. What characterizes the items on this rather innovative list of ‘classified material’ is that such information is typically given in the frank and friendly spirit of conciliation for the sole purpose of reaching an amicable settlement and that, therefore, its potentially prejudicial effect would be undesirable, if not very unfair.

It may be noted that Article 20, unlike Article 19, is not restricted to proceedings in respect of the same dispute as the conciliation proceedings. This wider scope seems appropriate in view of the practical possibility that a certain legal aspect or fact, which is, for example, the object of an admission or is an element of a settlement proposal, may become relevant in a different dispute which is the subject of other proceedings. In conclusion, it may be repeated that any of the Rules, including Article 20, is subject to mandatory law.

Referring Principles:
XII.5 - Settlement privilege