Burden of proof

Another matter which frequently preoccupies arbitral tribunals in the context of procedural public policy is the burden of proof. It is generally accepted that there is a broad general principle that places the burden of proof on a claimant. Nevertheless, international arbitral tribunals tend to approach the question of burden of proof with a high degree of pragmatism. The most commonly applied principle is that a party who wishes to rely on a fact must prove that fact to the satisfaction of the tribunal.

The standard of proof that will be required to "satisfy the tribunal" depends on how surprising the fact may be. Allegations of fraud against a businessman will need to be proved to a high standard. On the other hand, proving the weather conditions at a construction site in a desert on a certain date, for example, may require no more than a copy of a local newspaper containing a published meteorological report for the relevant date.

The Arbitral Tribunal in *Asian Agricultural Products* stated that there is an established international law rule that:

> allegations, but must also convince the Tribunal of their truth, lest they be disregarded for want, or insufficiency, of proof.

In pursuing this burden, the parties should have the opportunity to present their arguments. Transnational public policy, however, does not encumber an international arbitral tribunal to follow the rules of evidence of any particular national court.

As a general principle, the probative force of any evidence presented is for the tribunal to determine. In case a party adduces some evidence that *prima facie* supports his allegation, the arbitral tribunal may determine that burden of proof shifts to the opposing party.

---


52 Id.