The Arbitral Role in Contractual Interpretation

[...]

2. INTERNATIONAL ARBITRATORS' WORDS AND DEEDS ON CONTRACTUAL INTERPRETATION

B. International Arbitral Attitudes Towards Contractual Interpretation

Arbitrators’ characterizations of their preferred interpretive approach are not mere rhetoric. The analysis of published awards above shows that arbitrators tend to follow a relatively consistent interpretive approach, regardless of the governing law. This approach is characterized by invocation of the subjective intention of the parties, an emphasis on reading the contractual text in its commercial context and an inclusive approach to extrinsic evidence of the parties’ intentions.

In a recent article, Lévy and Robert-Tissot reach largely the same conclusion. After acknowledging that arbitrators are bound by the interpretive rules in the governing law, they conclude that, ‘In reality, by applying his common sense, experience, and personal convictions, the arbitrator determines the true intention of the parties.’ This approach is often justified by citations to general principles of international commercial law, whether codified or uncodified. Their article is mostly descriptive rather than normative, but Lévy and Robert-Tissot do eventually endorse the interpretive method described: ‘Done properly, reaching solutions by interpreting the parties’ intentions rather than by sophisticated juridical reasoning deserves praise....'
Referring Principles:

IV.5.1 - Intentions of the parties