Case No. 519


Extract of award made on October 18th, 1932, by the arbitrator, Mr. Maurice Golay, Director General of the Société de Banque Suisse, Basle:

"Whereas the plaintiff sold to the defendant by contract dated July 20th, 1931, 1,000 dozen "X" (metal articles) at an average price of six shillings and sixpence,

The following points must be considered:

The documents submitted show that the contract was made without any reservation as to exchange rate and without any gold clause whatsoever.

It is necessary to consider what the intention of the parties was. The plaintiff always quoted his selling prices in pounds sterling for reasons only known to himself. He therefore took the risk of the English exchange, which risk furthermore had been implicitly accepted by the defendant on the signature of the contract. It goes without saying that if the pound sterling had risen in relation to the florin, the defendant would nevertheless have had to pay in pounds sterling. It is to be noted however that the defendant buying and selling in pounds sterling had no need to concern himself with the exchange rate.

It can be said here in a general way that it is regrettable to see so many cases of traders dealing in currencies other than the national currency who do not concern themselves sufficiently with the question of exchange rate or who are not sufficiently acquainted with the fast that it is possible to protect themselves against rate fluctuations by buying future exchange. A good trader should always take precautions in that respect, for his function is to do business and not to speculate on the rate of exchange.

It cannot be said, as the plaintiff claims, that in choosing the pound sterling the intention of the parties was to deal in gold value against gold value; furthermore, can it be said, as the plaintiff claims, that "X" (metal articles) represent gold value? It is evident that they do not, since they are subject to enormous price fluctuations, as the last few weeks have shown.

It remains to be decided, if the terms of the contract are to be strictly taken into account, what is the responsibility of the defendant as a result of any apparent delays in payment.

The contract stipulated payment with 2 % discount 10 days after the arrival of the goods in Bremen.
The first lot which was invoiced an August 22nd, 1931, was payed for an September 9th and does not enter into the discussion. The second lot invoiced on September 9th was payed for on October 5th. The statements of the parties show that this lot arrived in Bremen on September 14th, a fact which was admitted by the plaintiff an October 30th. This lot ought therefore to have been paid for on September 24th instead of October 5th. The defendant thus owes the plaintiff the difference between the rate of exchange of September 24th (official rate in London RM. 17.24) and that of October 5th (official rate in London RM. 16.62 1/2) on the sum of £ 39.16.3, i.e. RM. 24.49.

The subsequent deliveries, although effected after the devalorisation of the pound sterling, did not, on that account, fail to be made in accordance with the terms of the contract. Having apparently been paid for within the stipulated time, they cannot give rise to any claim.

As far as costs are concerned, it must be considered that the two parties are acting in good faith and, furthermore, that the plaintiff is incontestably suffering a loss an the rate of exchange, for which however the defendant is in no way responsible, so that there is reason to make the plaintiff bear 4/5ths of the costs and expenses already incurred an the date of the present award and to charge the remainder to the defendant.

For these reasons, I, the undersigned arbitrator,

1) Award and find that the; plaintiff can only claim from the defendant the sum of RM. 24.49 for the difference in the rate of exchange on the second delivery;

2) Award and direct in consequence that the defendant pay to the plaintiff, within the period of one month from the date of the present award, the sum of RM. 24.49M;

3) Award and direct that the plaintiff accept the said sum in full settlement of all claims;

4) Award and direct that the plaintiff pay 4/5ths of the costs and expenses already incurred on the date of the present award; award and direct that the defendant pay the balance. Charge to the party necessitating them, the costs and expenses for the registration of the award, and also any taxes, legal dues or fines which might be required in connection with the award.

The total costs and expenses, of International Headquarters amount to French frs. 1,089.60.

I award and direct in consequence that the plaintiff must pay the sum of French frs. 871.70 to Headquarters of the International Chamber of Commerce before he can receive a copy of the present award, and award and direct that the defendant pay to Headquarters of the International Chamber of Commerce the sum of French frs. 217.90 before he can receive a copy of the present award; should the defendant refuse to pay the said sum, the plaintiff (in accordance with Article 25 of the Rules of Conciliation and Arbitration of the International Chamber of Commerce) will himself pay the said sum to International Headquarters before receiving a copy of the present award, without prejudice to his claim in respect of this sum against the defendant according to the same article of the Rules."

Referring Principles:

V.2.3 - Nominal-value principle