Title:
Hamburger Freundschaftliche Arbitrage, Award of May 2, 1977, YCA 1979, at 202 et seq.

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1. ARBITRAL TRIBUNAL OF HAMBURG FRIENDLY ARBITRATION. AWARD OF MAY 2, 1977 (ORIGINAL IN GERMAN)

Partie Claimant: German (F.R.) creditor; Defendant: not indicated
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in:
Subject matter:
- depreciation of currency
- duty to mitigate damages

Award

'The question whether, and to what extent, under German law, currency loss can be qualified from a legal point of view as damages resulting from delay (Sects. 284 and 286 German Civil Code), has often been the subject of judicial decisions. This question should be distinguished, however, from the question whether the "creeping" depreciation of the exchange rate of an internationally customary "classical currency", as is presently the case with the British pound, can be recognized as damages, in the form of currency loss, caused by delay. To the knowledge of the arbitral tribunal, there is no leading decision concerning the latter question. The arbitral tribunal is of the opinion that this question must be answered in the negative.

'As a matter of principle, every money debt is a debt in value in the broadest sense, with the result that only the nominal value of the currency is due and payment of the depreciated money releases the debt. The only exception to this principle is where post-inflation revaluation of a currency takes place by means of a monetary reform. There is no reason to deal with this exception in the present case, since so far the British pound has not been subject to a monetary reform.

[...]

'A creditor of a currency foreign to him does not automatically have to take into account a depreciation of the foreign currency because of a change in the rate of exchange, when there is a fixed exchange rate or an exchange rate which is floating insignificantly in relation to a fixed reference value. In these cases it might therefore be justified to determine the amount of damages from default on the basis of the difference between the amount originally obtainable under the higher exchange rate and the subsequently reduced amount resulting from the change in the rate.

'However, when, as in the present case, the foreign currency fluctuates because the rate of exchange is freely determined on the money market, the foreign money creditor is not entitled to expect that the exchange rate remains stable and that he will not sustain a loss of exchange.

[...]

[...]

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The General Editor wishes to express his gratitude to Dr. Kuno Straatmann who kindly made available both awards for the Yearbook. The awards will be published in a supplement to Straatmann-Ulmer *Handelsrechtlicher Schiedsgerichtspraxis* (see Yearbook, Vol. I (1976) p. 248).

**Referring Principles:**

V.2.3 - Nominal-value principle