Title:

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CASE NO. 31

Award of 2 August 1988, case no. 6/1985

Arbitrators: Three arbitrators: chairman of Indian nationality, two arbitrators of Yugoslav and Egyptian nationality

Parties: Claimant: An African company; Respondent: A European company

Place of Arbitration: CRCICA, Cairo, Egypt

Subject Matter: commission in commercial agency

Language of Arbitration: English

Applicable law: Egyptian law

Held

A wronged party must be put in the same position as he would have been had the breach not occurred.

Facts

The parties entered into a contract where the Claimant was appointed the sole agent of the Respondent for the sale of building material to the public sector of an African State. The agreement was for one year, effective from the date of signing of the agreement, and was to be renewed automatically for another year, unless either party sent the other a written notice two months prior to the expiry of the agreement or any renewable period. According to the Claimant, it had not received any notice near the end of the term of the agreement and assumed that the agreement was still valid.

Award

The Tribunal held that the agency agreement between the parties was valid and operative for the period specified by the Claimant and that the Claimant continued to be the sole agent of the Respondent for the purposes set out in the agreement.

The Claimant contended and the Tribunal accepted that during the validity of the agency agreement, the Respondent entered into another agency agreement with another company for the sale of building material to the public sector of the same African state. The second agency agreement concerned the supply of material in respect of which a tender was issued by the concerned Ministry and the Claimant's advice had also been sought regarding the same. The Claimant submitted evidence of correspondence to the Tribunal along with its claim and a copy of the second agency agreement.

The Tribunal held that the Respondent had committed a breach of the agency agreement between the Claimant and the Respondent which was in force at the time the Respondent entered the second agency agreement. The Respondent failed to provide an explanation in its defence. The Claimant was therefore entitled to damages for losses suffered as a natural consequence of the breach.
It is an established principle of law and recognized in the Egyptian Civil Code that an aggrieved party is entitled to damages for losses suffered and profit lost which flow as a direct and normal consequence of the breach by the other party. In other words, the party must be put in the same position as he would have been in if the breach had not occurred. The Claimant was awarded damages on that basis.

[...]

Referring Principles:

VII.1 - Damages in case of non-performance