

Jurisdiction and Natural Justice – Singapore High Court Examines Key Issues in Challenge of Arbitral Award

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Introduction

Under the arbitration framework, there are prescribed grounds on which arbitral awards may be set aside before the courts. In *DSQ v DSR* [2026] SGHC 67, the Singapore High Court examined, and rejected, two of the key grounds commonly relied on in challenges to arbitral awards – lack of jurisdiction and breach of natural justice – demonstrating the Singapore court's strong pro-arbitration approach through its policy of minimal curial intervention.

Here, the Employer and the Contractor in a railway project had entered a contract which contained a multi-tiered dispute resolution clause, requiring certain pre-arbitration procedures before a dispute could be submitted for arbitration. The matter involved six disputes which eventually went before an arbitral tribunal ("**Tribunal**"), in which the Tribunal found in favour of the Contractor ("**Award**"). The Employer sought to set aside the Award before the Court, alleging that: (i) the Tribunal lacked jurisdiction and that (ii) the Tribunal breached natural justice in relation to the Award.

The Court dismissed the Employer's application, upholding the Award. On the issue of jurisdiction, the Court found that the Employer was precluded from raising the jurisdictional challenge as the Tribunal had already made a preliminary ruling on jurisdiction, and the Employer had failed to challenge it within 30 days as required under the relevant legislation. In any event, the Court agreed with the Tribunal's decision that it had jurisdiction over the disputes.

On the issue of natural justice, the Court dismissed the Employer's complaints, finding that the Tribunal had not breached natural justice in issuing the Award.

The Contractor was successfully represented in these proceedings by Kelvin Poon SC, V Bala, Divyesh Menon, Ho Linming and Vanessa Ku of Rajah & Tann Singapore LLP.

Brief Facts

The parties were the Employer and Contractor under a design and build contract on a railway project ("**Contract**"). The Contract was based on the FIDIC form and contained a multi-tiered dispute resolution mechanism, requiring disputes to first be referred to a Dispute Adjudication Board ("**DAB**"), followed by a notice of dissatisfaction and an opportunity for amicable settlement, before arbitration could be commenced.

In the present case, a DAB was constituted and the Contractor referred a dispute ("**AEB Dispute**") to it. Before the DAB gave its decision, the Contractor referred four other disputes (Disputes 1 to 4) to the DAB, which the DAB declined to decide on the basis that it had only been appointed for the AEB Dispute. The Contractor accordingly issued a notice of dissatisfaction and submitted Dispute 1 to 4 to arbitration, along with Disputes 5 and 6 (since the DAB had stated that it would only decide the AEB Dispute).

In the Arbitration, the Employer contended that the Tribunal had no jurisdiction over Disputes 1 to 6, arguing that the Contractor had not followed the pre-arbitral procedure before commencing the Arbitration. The Tribunal dealt with the jurisdictional objection as a preliminary question and ruled in Procedural Order No 5 ("**PO5**") that the pre-arbitral procedure had been complied with. The Tribunal went on to issue a substantive Award on Disputes 1 to 6 awarding a sum of money to the Contractor.

The Employer applied to Court to set aside the Award on the following grounds:

1. the Tribunal lacked jurisdiction; and
2. the Tribunal breached natural justice in relation to four aspects of the Award.

Holdings of the High Court

The Court dismissed the Employer's application, upholding the Tribunal's Award.

Jurisdiction

The Court dismissed the Employer's jurisdictional challenge, finding that the Employer was precluded from raising the challenge at the setting-aside stage, and that the Tribunal had jurisdiction over the dispute in any event.

The Court set out the applicable principles relating to the timeline for jurisdictional challenges:

1. Under Article 16(3) of the UNCITRAL Model Law and section 10(3) of the International Arbitration Act 1994, if an arbitral tribunal rules as a preliminary question that it has jurisdiction, a party may apply to court to challenge this decision within 30 days.
2. This provision has general preclusive effect, such that a party who fails to challenge a preliminary ruling on jurisdiction within that time is generally precluded from raising the same jurisdictional challenge in a setting-aside application, citing the Court of Appeal decision of *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd* [2019] 2 SLR 131 ("**Rakna**")

Here, the Court held that PO5 constituted a preliminary ruling on jurisdiction, thus bringing the timeline for challenge into play. As the Employer did not apply to court within 30 days (or at all) to challenge PO5, it was precluded from seeking to set aside the Award on its jurisdictional challenge.

The Court further held that, with respect to the decision on admissibility, the Tribunal's ruling was not reviewable by the Court for the following reasons:

1. The general rule is that compliance with pre-arbitral procedure is generally a matter going to admissibility rather than jurisdiction.
2. This rule applied in the present case in that, the Employer's jurisdictional challenge (which was based on non-compliance with pre-arbitral procedure), went towards admissibility of the claims that the Contractor submitted to the Arbitration, rather than towards the jurisdiction of the Tribunal.
3. Accordingly, the Tribunal's decision on the Employer's jurisdictional challenge was a decision on admissibility, which the Court could not review.

In any event, on the merits of the jurisdictional challenge, the Court agreed with the Tribunal's decision that it had jurisdiction. The Tribunal had correctly found that the Contractor was entitled to refer Disputes 1 to 4 to the existing *ad hoc* DAB under the broad wording of the Contract, and that the DAB's wrongful refusal to accept those disputes meant the dispute resolution machinery broke down, entitling the Contractor to refer Disputes 5–6 directly to arbitration.

Natural Justice

The Employer also applied to set aside the Award on the basis of breaches of natural justice by submitting that:

1. The Tribunal adopted a methodology (the "**Overall Length Method**") for computing the cap on prolongation costs that was not pleaded, thereby depriving the Employer of a reasonable opportunity to be heard; and
2. The Tribunal failed to apply its mind to essential issues in failing to consider the Employer's:
 - case on repudiatory breach;
 - case that the Contractor should have pre-casted "Location Box" foundations, and that this caused the delay in the works; and
 - evidence on whether the changes to "Auto Location Huts" constituted variations.

The Court held that these allegations did not amount to any breach of natural justice as:

1. The Contractor had advanced the Overall Length Method in its written closing submissions, and the Employer had a fair and reasonable opportunity to respond but failed to do so.
2. The Award expressly addressed and dismissed the Employer's contention of repudiatory breach.
3. The Tribunal had addressed the pre-casting issue in multiple paragraphs of the Award. As such, even if there were any breach of natural justice, it would not have caused the Employer any prejudice.
4. The Court could not draw the inference that the Tribunal failed to consider the Employer's evidence on variations merely because it was not specifically mentioned in the relevant section. In any event, the evidence could not reasonably have made a difference to the outcome in that case given the Tribunal's factual findings.

Concluding Words

The Court's decision confirms the Court of Appeal's approach in *Rakna* that a party who refuses to utilise the appeal mechanism under Article 16(3) of the Model Law within the prescribed time limits and continues to participate in the arbitration will be precluded from raising the same jurisdictional objections in a setting aside application.

The decision also shows the Court's approach to jurisdictional challenges and allegations of breach of natural justice, demonstrating a practical approach that gives due deference to the tribunal's proceedings and decisions.

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