

Two arbitral awards were set aside by Svea Court of Appeal within one month

It is not common that contested arbitral awards are set aside. Looking at Swedish statistics over contested arbitral awards, it is obvious that only a few appealed awards have been reversed by the Svea Court of Appeal. Therefore, it was quite remarkable when Svea Court of Appeal in November 2022 set aside two awards within the same month. The court assessed that the arbitral tribunal in respective arbitration had exceeded their assignment which most likely had affected the outcome of each arbitration whereby the awards were reversed (one in its entirety and one partially).

On 4 November 2022 Svea Court of Appeal partially set aside an arbitral award in case no. T 1356-18 in which the court found that the arbitral tribunal had exceeded its assignment. According to the court, the arbitral tribunal had granted the claimant reimbursement of costs not included in its claim and that the arbitral tribunal wrongfully had relied on circumstances not included in neither the claimant's nor the respondent's respective claim/response. Instead, without cause, the arbitral tribunal based the award on the arbitral tribunal's own experience of the industry in question. In addition, the arbitral tribunal ignored to examine a question on prescription made by the respondent. The claimant requested that the arbitral tribunal was to order the respondent to make payment of a certain amount of money in accordance with a construction agreement between the parties. The arbitral tribunal concluded that the respondent was obliged to make the payment in question but did not base the obligation on the legal ground alleged by the claimant. Instead, according to the arbitral award, the payment awarded to the claimant concerned the claimant's costs, even though the claimant hadn't included such costs in its claim.

In conclusion, Svea Court of Appeal assessed that the arbitral tribunal had exceeded its assignment by granting the applicant an award beyond the claim, without cause applying circumstances not claimed by either party to the arbitration and by not examining all claims made by the parties. The arbitral tribunal's exceedance was substantial to the extent it could not be excluded that it had affected the outcome of the case whereby the court reversed the award in selected parts.

In the second case, no. T 3623-21, delivered on 24 November 2022, Svea Court of Appeal set aside the arbitral award in its entirety after having concluded that the arbitral tribunal in said arbitration had exceeded its assignment to the extent that the award did not reflect the claimant's claim.

The claimant, a property owner, leased a facility to the respondent. According to the lease agreement, the respondent was entitled to transfer the lease agreement to another company within the same company group, without the claimant's written consent, on the condition that the respondent made an acceptable security deposit. The question was if the respondent had made such acceptable security deposit when transferring the lease agreement to the respondent's subsidiary.

The claimant requested that the arbitral tribunal was to oblige the respondent to make a security deposit valid during the entire lease period covering the lessee's complete obligations under the lease agreement. According to the court, the claimant's request could not be understood as other than the security deposit to be made as a monetary deposit with a certain amount. However, instead the arbitral tribunal obliged the respondent to provide a "rental guarantee" (Sw: "*garantihyra*"), which the claimant had not requested. Accordingly, the court concluded that the arbitral award deviated from how the claimant had worded its request and consequently that the arbitral tribunal had exceeded its assignment to the extent that the outcome of the proceedings was affected, whereby the court reversed the award in its entirety.

According to Swedish law, a court or an arbitral tribunal may not exceed or consider other than the respective claims made by the parties or base any decision or similar on circumstances not stated by the parties. Further, according to the rule of disposition (Sw: "*dispositionsprincipen*"), the parties decide the framework for the proceedings with its respective statements and claims. In the event a court or an arbitral tribunal exceeds the rule of disposition, the respective instance has exceeded its

assignment which may lead to the judgement or arbitral award being reversed if appealed or challenged.

With reference to the above it is very uncommon that arbitral awards are set aside. If so, it is most likely due to the arbitral tribunal exceeding its assignment as described by the cases referred to. Consequently, as long as the arbitral tribunal refers to each party's cause of action, it is very difficult to challenge an arbitral award and thus has an arbitral award reversed.