

Swedish Court sets aside arbitration award due to the tribunal exceeding its mandate (Landbyska v The Grand Group)

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Arbitration analysis: Svea Court of Appeal (the 'Court') set aside an award because the tribunal had exceeded its mandate by granting relief which was deemed to be outside the scope of claimant's request for relief. The Court clarified that the principle of party dispositions, which is a fundamental principle in civil proceedings in Sweden, applies also in arbitration. This means that the tribunal may not rule on anything else or more than the specific request for relief made by a party, also known as non ultra petita. In this case, the Court found that claimant had requested the tribunal to order respondent to post a security for a certain amount in Swedish krona. However, in the award the tribunal ordered respondent to post a security equivalent to guaranteed rental amount for 36 months. The Court held that the tribunal had granted other relief than what had been requested by claimant and, thus, exceeded its mandate. The case has been appealed to the Swedish Supreme Court. Written by Ginta Ahrel (Partner) and Mathilda Wahlgren (Associate) at Westerberg & Partners, Stockholm.

Kommanditbolaget Landbyska Verket 11 v The Grand Group Aktiebolag by Svea Court of Appeal, Case T 3623–21 (not reported by LexisNexis®UK)

What are the practical implications of this case?

This case is a rare example of an award being set aside because of the tribunal departing from the explicit wording used by claimant in its request for relief. It illustrates the critical importance of such wording, not only for the parties in defining their request for relief, but also for the arbitrators in delivering valid and enforceable awards.

For arbitrators, the ruling emphasises the importance of not making any assumptions regarding the extent of their mandate. Even if the tribunal in this case perceived that they had an extensive mandate, the Court found that claimant had not adjusted its request for relief. Hence, it is imperative that arbitrators clarify the extent of their mandate with all parties involved.

It should be noted, however, that the case was a purely domestic one with parties, counsel and arbitrators all being Swedish. It was therefore natural for the Court to rely on analogies with the Swedish Procedural Code, which would most probably not have occurred in international arbitration conducted in Sweden.

What was the background?

A lease agreement for a premises in Stockholm (the 'Lease Agreement') was entered into between Kommanditbolaget Landbyska Verket 11 ('Landbyska') and the Grand Group Aktiebolag (the 'Grand Group') operating through its subsidiaries, among others, the Grand Hôtel in Stockholm.

Under the Lease Agreement, the Grand Group, as the tenant, was allowed to assign the Lease Agreement to another entity within its group of companies without Landbyska's prior consent if the Grand Group provided an acceptable security for the whole lease period which covered all obligations that could arise under the Lease Agreement.

A dispute arose between Landbyska and the Grand Group after the subsidiary of the Grand Group started to use the premises for their hotel business.

To settle the dispute Landbyska initiated arbitration proceedings. Landbyska requested that the tribunal firstly, declared that the Lease Agreement had not been assigned by the Grand Group to its subsidiary but continued to apply between Landbyska and the Grand Group and secondly, if the tribunal concluded that the Lease Agreement had been assigned, ordered the Grand Group to provide an acceptable security either: (i) unlimited or (ii) limited to SEK 555,400,894 or the amount the tribunal found equivalent to the value of all obligation that could arise during the lease period.

In its ruling the tribunal declared that: (i) the Lease Agreement had been assigned by the Grand Group and (ii) ordered the Grand Group to issue a security to Landbyska for all obligations that could arise under the Lease Agreement during the whole lease period equivalent to rental amount for 36 months.

What did the court decide?

Landbyska was not satisfied with the outcome of the arbitration and initiated set-aside proceedings before the Court claiming that the tribunal had exceeded its mandate or, in the alternative, made a procedural error by awarding relief not requested by Landbyska.

The first question before the Court was if the tribunal had granted a relief outside the scope of Landbyska's request for relief and thereby exceeded its mandate pursuant to section 34(1) item 3 of the Swedish Arbitration Act.

The Court determined that Landbyska's request for relief, as it was stated in the award, could only be interpreted as requesting the Grand Group to provide a security for a certain amount in Swedish krona. As 'rental amount' did not appear in Landbyska's request for relief, nor could it be understood or converted into a specific amount in krona, the Court concluded that the tribunal had granted an award outside the scope of Landbyska's request for relief.

The second question before the Court was whether Landbyska had adjusted its request for relief during the main hearing before the tribunal in such a way that the relief granted did in fact fall within the scope of such adjusted request for relief.

The Court found that, even if the tribunal had perceived that they were given an extensive mandate, the tribunal had not perceived that Landbyska had in fact adjusted its request for relief. The Court thereby concluded that the wording of the request for relief, as it was stated in the award, set out the mandate for the tribunal.

The Court thereby determined that Landbyska's request for relief was for a specific amount and that no adjustment of the request for relief had been made. As the tribunal had granted relief that was not for a specific amount, the tribunal had exceeded its mandate and the award was set aside in its entirety. The Court arrived at this decision by a majority vote.

Notably, the Court granted a leave to appeal this case to the Supreme Court. Under Swedish arbitration law, set-aside cases are admitted to the Supreme Court only if leave to appeal is granted by both the Court of Appeal and by the Supreme Court. To the best of the authors' knowledge, the Grand Group has appealed the case to the Supreme Court, which has not yet decided on its leave to appeal.

Case details

- Court: Court of Appeal
- Judges: Ulrika Ihrfelt, Eva Edwardsson and Mats Holmqvist (dissenting opinion)
- Date of judgment: 24 November 2022

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