

Award upheld as arbitrator exceeding mandate did not affect outcome of arbitration (Court of Appeal of Western Sweden)

by *Practical Law Arbitration*, with *Westerberg & Partners*

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In *Rolfs Flygbuss v RK Travel Group* (Case number T 2710-22), the Swedish Court of Appeal rejected a challenge to an arbitration award, finding that, although the arbitrator exceeded their mandate, this did not affect the outcome.

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The Court of Appeal of Western Sweden has rejected a challenge to an arbitration award, finding that the arbitrator exceeding their mandate did not affect the outcome of the case.

A dispute arose between two Swedish travel companies and was referred to a Swedish-seated tribunal. The claimant (RFB) argued that it had paid more to the respondent (RK) than it was obliged to under the parties' contract, and that it was entitled to have the excess amount returned.

In the arbitration, RFB argued, among other things, that the overpayments constituted a debt owed to it by RK or, alternatively, that the payments should be returned under the principle of *condictio indebiti* (where a party is entitled to have amounts paid in error returned).

In the award, the sole arbitrator concluded that the overpayments by RFB to RK constituted a debt, but, under the heading *condictio indebiti*, held that RK did not have to return the overpayments because it had received them in good faith.

RFB challenged the award before the Court of Appeal of Western Sweden (Court) on the basis that the arbitrator had exceeded their mandate by assessing the good faith defence under the *condictio indebiti* heading. RFB argued that, because the arbitrator had upheld its debt case, they should not have gone on to assess RK's defence to the *condictio indebiti* claim as this was an alternative ground.

Under the Swedish Arbitration Act (SAA), an award may be set aside where the tribunal exceeds its mandate and this is likely to have influenced the outcome of the case (*section 34, item 3*).

The Court rejected the challenge. While it held that the arbitrator had exceeded their mandate by determining the *condictio indebiti* ground (including by applying the good faith defence), the Court held that RFB had failed to establish the second part of the test. This was because RK had raised a good faith defence to RFB's debt argument as well. RFB had not proven that the outcome on the good faith argument would have been different had it been determined separately in relation to the debt claim.

The judgment highlights two important questions when arbitrating in Sweden. First, the importance of the tribunal deciding on the parties' arguments as they are put forward. Second, the legal prerequisites set out in the SAA are interpreted strictly by the Swedish courts.

Case: *Rolfs Flygbuss v RK Travel Group* (Case number T 2710-22) (8 May 2024).

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