

Validity of Arbitral Awards on Commerce - Perspective on the Logical Generation of the Award

Shuxiang Hong^{1*}

¹ Law School, Guangzhou Xinhua University, Guangzhou, Guangdong, China

Email Address

hongshx@mail.sysu.edu.cn (Shuxiang Hong)

*Correspondence: hongshx@mail.sysu.edu.cn

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Abstract:

The validity of an arbitral award depends on both the “internal and external” aspects of the award. The former refers to the division of the factors affecting the validity of an award into the type of “outside the award”, which includes factors such as arbitration procedure, substantive review and public interest, and the type of “inside the award”, which includes factors such as the scope of content, structural system and logic of reasoning. The latter refers to the logical generation of an award which, in addition to satisfying external formal elements such as format and structure, needs to bridge the four divisions between claim and award, evidence and reasoning, fact and law, and result and argument, in order to achieve internal logical self-consistency.

Keywords:

Validity of Arbitral Awards, Award, Normative Reviews, Logical Generation, Logical Self-Consistency

1. Presentation of the Problem

Arbitration, as an alternative to judicial proceedings, has traditionally been known for its efficiency and relative affordability, and has occupied half of the dispute resolution landscape. The “effectiveness” of arbitration is constantly challenged by a variety of factors, which directly lead to the collapse of the “efficiency” of arbitration. These include procedural factors such as the composition of the arbitral tribunal and the cross-examination process, as well as substantive factors such as unfairness and over-award; formal factors such as irregularities in the award, as well as substantive factors such as bribery of arbitrators; and factors such as unclear findings of fact, as well as errors in the application of the law. All these factors directly or indirectly lead to the impairment of the validity of the arbitration, such as the arbitral award being set aside, requested to be re-arbitrated or ruled not to be enforced.

Taking the “award” as the boundary, the above factors can be divided into those outside the “award” and those inside the “award”. For a long time, arbitration practice and theory have focused on the factors outside the award, such as acceptance of supervision and optimization of supervision [1], and the cauterization of the grounds

for setting aside the award [2], while the factors inside the award have long suffered from a lack of attention. Even if there are some views that recognize the factors within the award, such as the “comprehensiveness of the award in terms of the evidentiary material” [3], such views also suffer from the fact that “only the ‘elements’ of the award are seen, but not the ‘elements’ of the award. elements’, but ignores the ‘combination of elements’, i.e., the ‘logical structure’ of the award”.

In fact, arbitration and judicial proceedings work together in “dispute resolution”, and the award has the same function as the judgment to “determine the facts and apply the law”. The award also serves the same function as the judgment of “determining the facts and applying the law”. Unfortunately, against the backdrop of the growing importance of reasoning in judgments, the content and logical structure of the award, as a vehicle for recording the arbitration process and carrying the validity of arbitration, has not been given due attention. Against the background of the great importance attached by the Party and the State to the cause of arbitration, the question of how to clarify the form and substance of the award, to bridge the gap between the content of the award, and to repair the disagreement between what should be and what is, is an issue of the times that cannot be avoided by both the practice and the practice of arbitration.

2. Normative Review of the Award: the Disagreement Between What is Real and What Should Be

The standard of an award from an objective point of view has two aspects, the external “standard form” and the internal “logical structure”. The “external aspect” of the format and form of the award is self-explanatory, requiring the “finding of facts” and the “application of law”; however, the “internal aspect” of the content and logical generation of the award. However, the content and logic of the award are frequently at odds with each other, mainly in terms of the disconnect between the request and the award, the ambiguity between the evidence and the reasoning, the misalignment between the facts and the law, and the fragmentation between the result and the arguments.

2.1. Disconnect between the request and the award

In an arbitral award, there are three types of situation between the claimant’s request and the arbitrator’s award: award = request; award < request; award > request. The situation where “award = claim” is the ideal situation for an award and the ideal form of the award. In reality, however, there are often situations where “award < request” or “award > request” are not what you would expect, the former being called “missed awards” and the latter being called the former are called “omissions” and the latter “overcuts”.

The three main types of “award < request”, i.e. “omission of award”, are writing errors (incorrect calculation, ruled but omitted), unclear terminology and omission but not awarded. As our legislation only provides for the possibility of “correction” in the case of “miscalculation, ruled but ‘omitted’”, but for “unclear terminology” and “omission but not ruled. However, it is difficult to find effective guidelines on how the two situations of “unclear language” and “omission without award” should be resolved, i.e. There is a legislative gap. In the case of “omission”, the international practice is to re-arbitrate or to set aside the arbitral award; however, there is no consensus in our academic community. In fact, if we consider the original purpose of

the arbitration system and the purpose of the legislation, we should avoid the extreme approach of “re-arbitration or setting aside the arbitral award”, which would lead to the total annulment of the arbitration proceedings. Moreover, considering that “omissions” are clearly different from “errors”, it is only in the case of “omissions” that the facts of the case and the relationship between the parties’ rights and obligations are determined to be materially wrong, which may lead to the outcome of the original award. It is therefore necessary to consider setting aside the corresponding arbitral award only if there is a material error in the determination of the facts of the case and the relationship between the rights and obligations of the parties, which may lead to a significant change in the outcome of the original award [4]. The case of “unclear language”, which may lead to both omissions and overruling, will be discussed below.

The “award > claim”, or “super-award”, takes three main forms: exceeding arbitrability, exceeding the arbitration agreement and exceeding the request for arbitration. The scope and effect of arbitration depends on the choice of national legislation and policy, and there is no doubt that exceeding the statutory arbitrability will render the award invalid. As regards exceeding the arbitration agreement or exceeding the arbitration, although these two cases of super-arbitration do not necessarily lead to the total annulment of the award, there are several risks: firstly, there is the risk that the court of the place of application will find that “the award is indivisible and therefore ‘invalid in its entirety’”. Secondly, the express invalidity of the redundant subject matter and the redundant part of the award; and finally, the possibility that the redundant subject matter may be invalidated together with that part of the award if it is also listed under the concept of “respondent”.

It is worth noting that “semantic ambiguity” can lead to both omissions and over-awards (especially “over-awards with excessive good intentions”), both of which create great uncertainty as to the validity of the award. Even where there is a valid arbitration agreement, the scope of the award should be limited to the parties’ request for arbitration. This is like the principle that the parties are free to dispose of their rights in judicial decisions, where the scope of the hearing is limited to the plaintiff’s claim.

2.2. Ambiguity of evidence and reasoning

As with judgments, findings of fact in awards are also subject to the principle of evidentialist, i.e. The determination of the facts of the case around the evidence. Both judgments and awards require full reasoning and analysis of the scope of the evidence and its admission or otherwise. However, there is often ambiguity and difficulty in the correspondence between the evidence and reasoning in the award, such as whether the evidence admitted is sufficiently relevant, whether the evidence that has been examined is neither admitted nor the reasons for not admitting it, and whether the weakness of the evidence is supplemented by other evidence. At the same time, it is not uncommon for parties applying for the setting aside of arbitral awards to confuse “questions of form of proof and examination” with “falsification of evidence”. [5] The reasoning and analysis behind the evidence that appears in an arbitration needs to be clarified, both to ensure that the award is well structured and logical, and to prevent the validity of the award from being challenged due to the unclear reasoning of the evidence.

In fact, according to the logical progression of the award's clarification of the facts of the case, the evidence (including the evidence adduced by the parties themselves and the evidence taken ex officio by the arbitral tribunal) and the corresponding reasoning can be divided into four steps: firstly, the determination of the scope of the evidence in the case, which is intended to set the threshold for the evidence to be included in the arbitration case through the “deadline for proof”. This stage aims to set the threshold for the evidence to be included in the arbitration case by means of a “deadline for proof”. Accordingly, the tribunal is required to make two determinations based on the time limit for proof: the first determination is directly formal in terms of whether the time limit for proof has been exceeded; the second determination is substantive in terms of whether material that has exceeded the time limit for proof can be included in the scope of evidence. Secondly, the evidence included in the scope of evidence is examined for legality to determine whether it should be excluded from the scope of admissibility: for illegal evidence, it is excluded, and for legal evidence, it is judged in the third step of “relevance”. Again, the evidence judged by the legality is judged by the relevance, and the evidence that is directly related to the facts of the case and can restore the truth of the case is admitted and confirmed, while the opposite is excluded. Finally, the legitimacy and relevance of the evidence to distinguish the strength of the evidence, for the direct proof of the facts of the case directly into the argument, for the weaker evidence to consider whether there is a complementary, or with other evidence exists to corroborate each other. In either case, a reasoned analysis of the admission or non-admission of the evidence is required in the decision.

2.3. Misalignment of facts and law

As a parallel to a judgment, the content of an award is no more than a “finding of fact” and an “application of law”. The two pillars of any award are the facts and the law, which means that a mistake in either pillar will cause the corresponding award to shake the ground. However, a misalignment of fact and law can occur when an award is not properly prepared. In the case of findings of fact, it is often easy to find that the facts do not correspond to the statement of opinion, including the fact that the facts appear in the evidence but not in the findings, or the fact that the facts are found but not used in the evidence. As far as the application of the law is concerned, it is often the case that the corresponding decision is made without listing the corresponding legal basis, or is merely summarized in general terms such as “in accordance with the relevant laws and regulations”, or only lists the legal norms without listing the specific provisions and content, or the cited legal provisions are misaligned with the content of the ruling. Although the determination of facts and the application of the law belong to the realm of objective reduction and value-oriented judgement, the determination of facts is the prerequisite and basis for the application of the law, which means that there should be a one-to-one correspondence between the facts and the applicable law in any award, without any misalignment such as crossover or even difference.

2.4. The fragmentation of results and arguments

The award is not made by the arbitrator or the arbitral tribunal, but is the result of a finding of fact and application of the law at the request of the parties. Although awards may vary in style depending on the arbitrators and producers themselves,

which is a concrete manifestation of the fact that there is no definitive text, it is undeniable that there is a commonality of value in awards.

However, since the outcome of the arbitration is derived from the corresponding factual findings and application of the law, the outcome of the arbitration must be based on the corresponding facts and legal grounds. Accordingly, the outcome of an arbitration must be analyzed and justified in the light of the facts of the case, rather than being taken for granted as right or wrong, as this would be arbitrary. At the same time, the grounds for setting aside and re-arbitration provided for in China's legislation cover both substantive and procedural reasons, while in practice there is a blurring of the procedural and substantive focus, [6] such as some courts breaking through the current legislation and judicial interpretations to extend the grounds for "re-arbitration" to violations of statutory procedures, overruling, etc. "Extra-legal reasons". [7]

3. The Logical Generation of the Award: Both External and Internal

The validity and authority of the award, as embodied in the award, rests on two pillars: the determination of facts and the application of law, which are intertwined in the external form and internal logic of the award, and are mutually dependent on each other. Although the validity of an award is to some extent affected by judicial review, and judicial review of arbitration in China includes a certain degree of substantive review in addition to procedural review, in essence an award is subject to judicial review. In essence, however, the validity of an award depends on whether the award itself can be "internally and externally". Externally, the award needs to meet certain requirements of form and format, and to distinguish between "findings of fact" and "application of law"; internally, the award needs to form not only a "claim-dispute-evidence-award" from "--disputes --evidence --facts --law -Argument - Result", but also by bridging the fissures between claim and award, evidence and reasoning, fact and law, and result and argument, in order to achieve internal logical self-consistency.

3.1. Logical structure: Consistency from request to outcome

The validity of the award depends on both the "external form and format" and the "internal logical structure", which is highlighted by the "request to result" logical structure, and the bridging of fissures in the system of argumentation to achieve logical self-reliance. and the bridging of fissures in the argumentative system to achieve logical self-consistency. In terms of the logical structure, firstly, the claimant's claim should be matched and contrasted with the scope of arbitration permitted by law and the scope of the arbitration agreement between the parties in order to clarify whether the claim falls within the scope of arbitration and whether it falls within the jurisdiction of the arbitral tribunal. The first judgement is based directly on whether the period of proof has been exceeded and the second judgement is based on "whether the period of proof has been exceeded". The second judgement is based on the criteria of "whether the delay is justified and whether it has a significant impact on the facts of the case", and the second judgement is based on the substance of the material that has exceeded the deadline for proof to be included in the scope of evidence. The legal facts of the case are restored, and those who fail to provide evidence at the evidentiary stage shall bear the consequences of their own inability to prove; on the basis of the restoration of the legal facts of the case, the legal relationship is analyzed in the light of the dispute in the case, and the applicable laws and regulations and other normative documents are determined; the evidence that has

been cross-examined, the legal facts restored by the relevant evidence. The evidence, the legal facts restored by the relevant evidence, and the relevant laws, regulations and other normative documents corresponding to them are argued together to ensure that the evidence has authenticity, legality and relevance, that the legal facts are supported by the corresponding evidence, and that the application of the law is based on a one-to-one correspondence with the relevant facts; finally, the “evidence-facts-law” chain is used to arrive at a conclusion. --Finally, the arbitration outcome, i.e. the specific award, is reached through the “evidence-facts-law” chain. This completes the award from “Claims - Disputes - Evidence - Facts - Law -Law - Argument - Result”.

3.2. Logical self-consistency: effective bridging of potentially fragmented situations

It is worth noting that the logical generation of an award does not only depend on the completion of the internal logical structure, but also on the bridging of the possible fragmentation of the award's content in terms of claims and awards, evidence and reasoning, facts and law, and results and arguments, in order to achieve logical self-consistency within the award. Firstly, with regard to claims and awards, except for claims that go beyond arbitrability and the parties' consent to arbitration, all claims that fall within the jurisdiction of the arbitral tribunal should be responded to in the award, no more and no less, Secondly, as far as evidence and reasoning are concerned, the determination of the scope of evidence and its probative value should be fully justified and expressly stated and analyzed in the award, avoiding the ambiguous situation of “evidence without reason, reason without evidence”; secondly, as far as facts and law are concerned, the facts found should only be “legal facts” based on “lawful and valid evidence”, and not arbitrarily. The legal facts found should be supported by sufficient normative documents, such as laws and regulations, to serve the function of determining the rights and obligations between the parties. Finally, in terms of results and arguments, each award as a result of arbitration must have a corresponding factual and legal basis, which must be fully explained and analyzed in the body of the award.

Conflicts of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

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References

- [1] Wang, Z.X. The Logical Generation and Logical System of Arbitration Supervision. *Contemporary Law Review*, 2015, 29(6), 3-17.
- [2] Zhang, W.P. Analysis and Adjustment of the Grounds for Setting Aside an Arbitral Award. *Business and Economic Law Review*, 2018, 1, 114-118.
- [3] Fu, D.S. Reflecting the Full Range of Evidentiary Material: The Principles to be Observed in the Production of Awards. *Journal of Shanghai University of Political Science and Law (The Rule of Law Forum)*, 2002, 6, 26-31,40.

- [4] Chen, L. On the Remedy of Defective Arbitral Awards. *Journal of Gansu University of Political Science and Law*, 2016, 5, 109-117.
- [5] Zhang, J.C. Consensus in the Practice of Judicial Review of Arbitration. *Beijing Arbitration Quarterly*, 2013, 3, 63-78.
- [6] Bian, Y.M.; Wang, Z.W. An Empirical Study of the Application of the Rearbitration Regime by the Courts in China. *Commercial Arbitration & Mediation*, 2020, 4, 96-111.
- [7] Guo, Z.Y. An Empirical Analysis of the Expansion of the Validity of Arbitration Agreements. *Journal of Heilongjiang University of Technology (Comprehensive Edition)*, 2019, 19(6), 83-89.



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