The Court' views on the appropriate course to be taken by arbitrators were objected to but untested evidence becomes relevant during the course of preparation of an award remain valuable.

MEREDITH SARGENT

EVIDENCE – REFUSAL BY COURT TO HEAR EVIDENCE CONSIDERED IRRELEVANT HELD NOT TO BE DENIAL OF NATURAL JUSTICE

Federal Court
Lockhart (The Honourable Mr Justice)
(1993) 112 ALR 623
Gamester Pty Ltd and Anor

In arbitrations from time to time, one of the parties appears in person. In practice, this may cause problems for an arbitrator who is loathe to refuse the unrepresented party to adduce evidence or cross-examine upon matters which are clearly irrelevant. Some guidance in dealing with this dilemma is afforded by this case.

The appellant had appeared in person before Lockhart J. in the Federal Court. His Honour held that the application to the Federal Court was vexatious and an abuse of the Court's process and accordingly dismissed the proceedings on this basis. In this judgment he stated:-

> "I stopped further cross-examination of Mr Wheeler as I sought to elucidate from Ms Cameron, as I had indeed with her examination of Mr Fernando, the subject matters that she wished to ask questions about. It was very difficult to obtain any rational account of those matters and at times impossible to do so. but doing the best I could I allowed her to ask questions where it seemed to me to be appropriate. I regret to say they did not show any matter that I regard as relevant to this proceeding or even if it were relevant that would have had any probative value whatever.
>
> The case has reached a point where I will not allow it to go on any longer. To do so would, I think, be a serious erosion of the resources of this court and of the Commonwealth and a waste of everybody's time and money. I have on many occasions throughout the two days sought assistance from Ms Cameron as to what she really wishes to achieve and how she seeks to achieve it; but I have not been helped in that inquiry. I do not suggest that she deliberately refrained from helping me, or refused to help me, but I think she simply has no case whatever on which she can help me".

The matter came before Gaudron J in the High Court who considered whether or not there had been a breach of the rules of natural justice by denying the appellant a reasonable opportunity to remedy a defect in the evidence to be adduced or alternatively to lead argument that there was no such defect. Her Honour concluded that there was not a breach of the

rules of natural justice and stated:-

> "It seems to me that there is no denial of natural justice involved in terminating an opportunity to be heard when the evidence appears not to support the relief claimed and requests to state the matters which are said to support the grant of relief fail to produce a statement of those matters".

A Full Court of three High Court Justices upheld Gaudron J's decision and in doing so stated:-

> "In court proceedings, a judge is bound to give a party a reasonable opportunity to state the party's claim for relief and to point to the evidence which supports it. But if the opportunity is not taken, the judge is not bound to set out on a search for supportive evidence to support a claim which the party has failed to articulate intelligibly. Gaudron J was correct in holding that there was no denial of natural justice".

APPLICATION TO COURT TO ORDER SECURITY FOR COSTS REFUSED

Supreme Court of South Australia, Unreported, Dobell J.
4 August, 1993
Baulderstone Honribrook Engineering Pty Ltd v. State Constructions Pty Ltd

Does a Court have power to order security for costs in arbitration proceedings? In this case, Dobell J. answered this question in the negative.

The application was made under Section 47 of the Commercial Arbitration Act and Section 1335 of the Corporations Law.

His Honour pointed out firstly that an arbitrator has no power to order security for costs unless pursuant to an express agreement between the parties and further a Court only had power to order security for costs if it was expressly authorised to do so by statute.

His Honour firstly considered whether Section 47 of the Commercial Arbitration Act enabled him to order security for costs. Section 47 provides:-

> "The court shall have the same power of making interlocutory orders for the purposes of and in relation to arbitration proceedings as it has for the purposes of and in relation to proceedings in the Court".

His Honour was of the view that, although this section was worded in fairly wide terms, he did not consider that it should be used to alter the rights of parties. An order for security for costs can in effect stop a party who does not comply with the order from proceeding in the arbitration and as such interferes with the arbitration agreement made between the parties. If Parliament had wished to give the Courts power to make orders for security for costs in arbitration proceedings, it could have done so expressly as for example was done in the now repealed Section 18 (11) of the Arbitration Act 1973 of Queensland.