

forum is the equivalent of an agreement to arbitrate that does not specify a forum, as the parties had the intent to arbitrate even in the absence of a properly designated forum. Further, Harvic did not object to the AAA until the AAA itself pointed out that it was not the designated association.

The court also held that an arbitration clause is essentially a forum selection clause and, once selected, the rules of that forum should govern. In this case, the rules of the AAA more than adequately provided for all discovery questions and for the appointment of appropriate arbitrators. Accordingly, the parties were directed to arbitrate before the AAA.

Even though these cases indicate that to name a non-existent arbitration association in an international arbitration agreement will not prevent the parties from arbitrating if the need arises, parties intending to arbitrate when entering into an international arbitration agreement should ascertain whether the nominated arbitration association actually exists. In the long run, this will save both parties time and money.

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Arbitrator's Jurisdiction When Making a New Award

Mark Blake Builders Pty Ltd v Davis, unreported, NSW Supreme Court, Giles J, 14 November 1994.

In this case, an award had been returned to an arbitrator, who went on to make another award.

It was argued that in making the new award, the arbitrator had gone beyond the case as pleaded and particularised by the builder in two respects.

The builder wanted Giles J to determine that the arbitrator had exceeded his jurisdiction and therefore the award be declared null or invalid.

In upholding the argument that the award was a nullity, Giles J considered the status of an arbitrator's award and the role of the arbitrator.

He noted that after an arbitrator has published an award, the arbitrator cannot alter it unless it is remitted to him by the court.

If the award is wholly set aside, the arbitration goes back to the position immediately before the arbitrator published the award and the arbitrator regains jurisdiction. The arbitrator may allow further evidence and receive further submissions. The arbitrator is not bound by previous findings and may reconsider them.

When an award is set aside in part, the arbitrator does not regain jurisdiction of the part not set aside. However, the arbitrator is entitled to fully reconsider the matters in which the award had been set aside.

Giles J noted the decision of *Interbulk Ltd v Aiden Shipping Co Ltd (The Vimeira) (No.1)*, [1985] 2LI R 410, in which it was held that "where an award is remitted for an arbitrator to correct an admitted mistake in his award, his jurisdiction will generally only be revived so far as is necessary for him to make that correction but no more. It is necessary, therefore, to have regard to the order of the court in order to ascertain the extent to which, upon the remission, the jurisdiction of the arbitrator has been revived".

Accordingly, Giles J held that, in the end, the extent of the arbitrator's jurisdiction rests on the court's order - to what extent was the arbitrator's jurisdiction expressly or

impliedly "revived"? Depending on the terms of the order, it may be necessary to look to the court's reasons to decide the extent of revival. The arbitrator does not have jurisdiction going beyond what is necessary to give effect to the court's order.

Giles J held that the award was a nullity and that the arbitrator must take up afresh the remitted earlier awards with the guidance obtained from the reasons set out in this case.

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