

CASE NOTE:

**GLENCORE INTERNATIONAL V
PT TERA LOGISTIC: WHETHER
ARBITRATION NOTICE
INCLUDED COUNTERCLAIM**

NIGEL BROOK

Section 14(4) of the Arbitration Act 1996 provides that arbitral proceedings are commenced when a party serves notice requiring the other side to appoint an arbitrator or to agree to the appointment of an arbitrator. In this case, notice was given by one party (A) to commence arbitration in respect of their claims (and requiring the other party (B) to appoint a second arbitrator, and B responded by appointing an arbitrator "in relation to all disputes arising under the [contract]" (and a third arbitrator was subsequently appointed). However, by the time B served its defence and counterclaim, the limitation period for claims under the contract had expired. The arbitrators asked the court to decide whether the counterclaim was time-barred.

Knowles J noted that the claim and counterclaim arose out of a single set of facts giving rise to a balance of accounts or netting-off. In such circumstances, a reference to "claims" and "all disputes" in the notices had the effect of referring counterclaims, as well as claims, to the arbitrations. It did not matter that there had been no indication of a counterclaim at the time the notices were served. The situation was the same as if the notices had referred to "all claims and counterclaims", with no counterclaim at that time being indicated – the arbitrators would still have jurisdiction when a counterclaim was brought later on. However, the judge left open the issue (because he was not required to decide it) of whether a reference solely to "claims" would have been enough to include a reference to "counterclaims".

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