

Case in Brief

Order by the Tribunal: an order can be viewed as an award under the Arbitration Act 1996

A recent decision by the English High Court, *YDU v SAB and BYH*,¹ considers the status of an order made by an institute in London (the **Tribunal**). The dispute itself related to an incomplete sale of shares from the claimant (YDU) to the first defendant (SAB). The claimant was explicitly ordered by the Tribunal to not sell the shares to anybody, except the first defendant.

YDU then applied to the English High Court. A declaration was sought that the order for specific performance made by the Tribunal did not represent an award. This was grounded in the fact that the order was conditional and that the Tribunal had reservations about their own jurisdiction. This potentially inhibited the validity of the Tribunal's order, and hence its status as an arbitral award. Whether there was a valid award was the focus of the court proceedings.

Decision

The High Court held that in this case, an award had been made. It mainly based this declaration on the following factors:

- [Section 39 of the Arbitration Act 1996](#) (UK) (the **Act**) deals with provisional awards. Here, parties are free to agree that the tribunal has the ability to make an order on *any relief which it would have power to grant in a final award*. The order could be regarded in this light.
- [Section 48\(5\)](#) of the Act states that specific performance of a contract can be ordered by an arbitral tribunal. Save a change in circumstances, the Tribunal could not have

revisited the decision. In this sense, the order was final. This conclusion was reached after analysing section 1 of the Act.

- The Court found that the order against the claimant that shares were only to be sold to the first respondent was an interim award. It was easy to see how this could be characterised as *an order preserving rights or property pending a specified event or further order*. The parties had agreed to a provision in their arbitration agreement that *any ruling by the arbitration tribunal on interim measures shall be deemed to be a final award with respect to the subject matter thereof and shall be fully enforceable as such*.

One of the main points emphasised by the decision is that the Act does not define what an award is. Rather, it affirms the validity of an award. That being, awards are final and binding. The Court examined the *usual position* that an award being given means that the tribunal has exhausted its jurisdiction and has no further powers to act. However, the High Court also made the declaration that it would be *too dogmatic and absolutist a position* to say an award can never be reviewed.

Powers of the tribunal

One aspect to highlight is that the decision provides light on some of the powers a tribunal is afforded. A tribunal to a large extent maintains supervision over orders for specific performance. It also can make conditional orders and can generally do so without hindering the categorisation of the order as an award.

1 [YDU v SAB and BYH \[2022\] EWHC 3304 \(Comm\)](#).

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