

SVEA COURT OF APPEAL
Department 02

JUDGMENT
12 September 2005
Stockholm

Case No.
T 4390-04

CLAIMANT

Wirgin Advokatbyrå Handelsbolag (formerly Advokatfirman Linse & Wirgin Handelsbolag), Reg. No. 916765-0960, Mäster Nilsgatan 1, 211 26 Malmö

RESPONDENT

If Skadeförsäkring AB (publ), Reg. No. 516401-8102, If Näringsliv, 106 80 Stockholm

Counsel: Insurance Lawyer Jörgen Pettersson, address as above

MATTER

Invalidity of arbitration award etc.

RELEVANT DECISION

Arbitration award given in Stockholm on 2 February 2004 as corrected on 1 March 2004, see appendix.

JUDGMENT OF THE COURT OF APPEAL

1. The Court of Appeal declares the arbitration award invalid with respect to Mr. L's correction of 1 March 2004.

2. If Skadeförsäkring AB (publ) is ordered to compensate Wirgin Advokatbyrå Handelsbolag for its litigation costs before the Court of Appeal in the amount of SEK ten-thousand (10,000), comprising costs for legal counsel, plus interest pursuant to Section 6 of the Swedish Interest Act from this day until the day of payment. SEK 2,000 of the amount relates to value added tax.

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MOTIONS ETC.

Wirgin Advokatbyrå Handelsbolag (Wirgin) has moved that the Court of Appeal shall declare the correction made by Mr. L on 1 March 2004 invalid and declare invalid or annulled the amendment of the arbitration award effected by the 1 March 2004 correction.

If Skadeförsäkring AB (publ) (If) has disputed the motion.

The parties have claimed compensation for their respective litigation costs.

GROUNDS OF THE PARTIES ETC.

In support of its case, Wirgin has maintained mainly as follows. The correction has not been signed by all arbitrators. This violates Section 31 of the Swedish Arbitration Act and entails that the arbitration award, with respect to the correction, is invalid. Further, the arbitral tribunal exceeded its mandate to correct the arbitration award since the correction does not relate to any oversight or obvious error, but rather makes a material change to the arbitration award. This incorrect application of the law is obviously in breach of fundamental principles of Swedish law and consequently the correction is invalid. In the alternative, the arbitral tribunal's excess of its mandate to correct the arbitration award constitutes a procedural error that affected the outcome of the dispute, which means that the correction shall be annulled.

In support of its case, If has maintained mainly as follows. The fact that only the chairman has signed the correction does not violate the procedural rules of the Swedish Arbitration Act. The correction is permitted since it relates to a "similar oversight" as set out in Section 32 of the Swedish Arbitration Act.

The case has been decided without a main hearing pursuant to Section 1 of Chapter 53 and item 5 of the first paragraph of Section 18 of Chapter 42 of the Swedish Code of Judicial Procedure.

In support of its claim, Wirgin has referenced the original as well as the corrected arbitration awards as documentary evidence. If has referenced a letter of 12 October 2001 as documentary evidence.

GROUNDS

The main rule set out in the first paragraph of Section 31 of the Swedish Arbitration Act provides that an arbitration award shall be signed by all arbitrators. Section 32 of the said Act provides that the arbitrators may under certain conditions correct an arbitration award. The wording of the provision states that all arbitrators must decide on such a correction. The preparatory works provide that the requirements as to form stipulated by Section 31 apply also to corrections, see Government Bill 1998/99:35 p. 233. In the present case, only the chairman of the arbitral tribunal has signed the correction. Item 3 of the first paragraph of Section 33 of the Swedish Arbitration Act provides that an arbitration award is invalid if it does not comply with the requirements set forth in the first paragraph of Section 31. According to the second paragraph of Section 33, an arbitration award can be partially invalid. The correction that was carried out by Mr. L on 1 March 2004 does thus not comply with the requirements of form of the Act and thus the arbitration award shall – with respect to the correction – be declared invalid. Upon this outcome the Court of Appeal has no reason to review whether the arbitrators have exceeded their mandate to correct the arbitration award under Section 32 of the Swedish Arbitration Act and possible consequence thereof.

Upon this outcome, If shall compensate Wirgin for its litigation costs. The claim hereon is reasonable.

APPEAL

The decision of the Court of Appeal may not be appealed pursuant to the first sentence of the second paragraph of Section 43 of the Swedish Arbitration Act.

[ILLEGIBLE SIGNATURES]

The decision has been made by: JH, President, Court of Appeal, and Judges of Appeal KB and IH, reporting Judge of Appeal. Unanimous.