

JUDGMENT of the
SWEDISH SUPREME COURT

given in Stockholm on 30 November 2010

Case No.
T 3258-09

APPELLANT

Handelshögskolan i Stockholm, 802006-2074
Box 6501
113 83 Stockholm

Counsel: Advokaterna SB and FG

COUNTERPARTY

HH

Counsel: Advokat AP

MATTER

Challenge proceedings with respect to arbitral award pursuant to Section 36
of the Swedish Arbitration Act (SFS 1999:116)

APPEALED DECISION

Svea Court of Appeal, judgment of 9 June 2009 in Case No. T 9424-07

JUDGMENT

By amending solely items 2 and 3 of the judgment of the Court of Appeal, the Supreme Court annuls item 2 and the second sentence of item 5 of the arbitral award rendered between the parties on 27 September 2007.

The Supreme Court orders Handelshögskolan i Stockholm to compensate HH for his litigation costs before the Supreme Court in the amount of SEK 362,500, all comprising costs for legal counsel, plus interest thereon pursuant to Section 6 of the Swedish Interest Act from the date of the judgment of the Supreme Court until the date of payment.

MOTIONS BEFORE THE SUPREME COURT

Handelshögskolan i Stockholm has moved that the Supreme Court shall dismiss the motions of HH. Handelshögskolan has further moved that HH shall be ordered to compensate Handelshögskolan for its litigation costs before the Court of Appeal, and that Handelshögskolan shall be discharged from the liability to compensate HH for his litigation costs before said court.

HH has disputed any changes to the judgment of the Court of Appeal.

The parties have claimed compensation for their respective litigation costs before the Supreme Court.

GROUND

1. Handelshögskolan – which has claimed that it was under the impression that the arbitration clause had ceased to apply with respect to the dispute – has not shown that HH must have realized that Handelshögskolan was under said impression. There are no grounds to adjust the arbitration clause. In view of the foregoing, and taking the reasoning of the Court of Appeal into account, the arbitration clause has not ceased to apply to the

dispute. Item 1 of the judgment of the Court of Appeal, whereby the Court of Appeal upheld the arbitral tribunal's decision on dismissal, shall therefore be affirmed.

2. The Court of Appeal has, in accordance with HH's motion, amended the arbitrators' decision on compensation for litigation costs in the arbitration proceedings, as well as the allocation of liability for the arbitrators' fees between the parties. Since the arbitration clause is applicable to the dispute, a public court cannot in proceedings under Section 36 of the Swedish Arbitration Act (SFS 1999:116) decide on the allocation of the fees in the arbitration proceedings. Pursuant to Section 42 of the Swedish Arbitration Act, this decision falls within the exclusive jurisdiction of the arbitrators. Thus, the decision on costs shall also be annulled. (Cf. SL's dissenting opinion in the case NJA 2008 p. 406 (p. 418 f.) and references made therein.) The situation in the present case is different from a situation in which the court adheres to the opinion of the arbitrators that the arbitration clause is no longer valid between the parties or in situations where a party, following a decision on dismissal, brings an action under the second paragraph of Section 36 of the Swedish Arbitration Act before a Court of Appeal relating only to the costs (cf. Government Bill 1998/99:35 p. 154 f. and 238).

The decision has been made by: Supreme Court Justices T.H., K.C.
(Reporting Justice), L.M., G.L., and I.P.

Reporting clerk: U.L.