

**DECISION OF THE**

# **SUPREME COURT**

Given in Stockholm on 2 June 2015

Case No.  
Ö 6354-13

**APPELLANT**

Subway International B.V.  
Address at counsel

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**COUNTERPARTY**

Mr. E  
*[INFORMATION OMITTED]*

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**MATTER**

Recognition and enforcement of foreign arbitration award

**APPEALED DECISION**

Decision of Svea Court of Appeal of 22 November 2013 in Case No. Ö 3912-13

Decision of the Court of Appeal

see Appendix

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## DECISION OF THE SUPREME COURT

The Supreme Court amends the decision of the Court of Appeal with the effect to recognize the arbitration award given by the International Centre for Dispute Resolution, New York, on 14 August 2012 in Case No. 50 114 T 00184 12 between Subway International B.V and Mr. E, and declares that the arbitration award may be enforced in Sweden as a final and binding judgment given by a Swedish public court.

The Supreme Court also amends the Court of Appeal's decision with respect to litigation costs so that the Supreme Court discharges Subway International B.V. from the liability to compensate Mr. E for his litigation costs before the Court of Appeal and orders Mr. E to compensate Subway International B.V. for its litigation costs before the Court of Appeal in the amount of SEK 24,000, comprising costs for legal counsel, plus interest pursuant to Section 6 of the Swedish Interest Act from 22 November 2013.

The Supreme Court orders Mr. E to compensate Subway International B.V. for its litigation costs before the Supreme Court in the amount of SEK 13,000, all comprising costs for legal counsel, plus interest pursuant to Section 6 of the Swedish Interest Act as from the day of the Supreme Court's decision.

## MOTIONS BEFORE THE SUPREME COURT

Subway International B.V. has moved that the Supreme Court shall grant its application for recognition and enforcement of the arbitration award given by the International Centre for Dispute Resolution, New York, on 14 August 2012 between the parties.

Further, Subway has moved that the Supreme Court shall discharge the company from the liability to compensate Mr. E for his litigation costs before the Court of Appeal and that Mr. shall be ordered to compensate Subway for its litigation costs before the Court of Appeal.

Mr. has objected to any amendment of the Court of Appeal's decision.

Subway has claimed compensation for its litigation costs before the Supreme Court.

#### FOUNDATIONS

1. On 2 June 2010, Subway and Mr. E entered into a franchising agreement under which Mr. would operate a Subway restaurant in Stockholm. After a dispute arose in connection with the agreement, the International Centre for Dispute Resolution, New York, rendered an arbitration award on 14 August 2012 in arbitration proceedings between the parties. The arbitration was resolved without Mr. E participating in the proceedings.

2. Subway has applied for recognition and enforcement of the arbitration award in Sweden. Mr. E has objected that he was unaware of the arbitration proceedings and that he, as a result, had not had the opportunity to present his case.

3. The Court of Appeal has rejected Subway's application.

4. According to Section 53 of the Swedish Arbitration Act (1999:116) foreign arbitration awards based on arbitration agreements shall be recognized and enforced in Sweden, unless otherwise provided in Sections 54-60. Thus, the main rule is that a foreign arbitration award shall be recognized and enforced here. Item 2 of Section 54 provides that a foreign arbitration award shall not be recognized and enforced in Sweden if the party against which the arbitration award is being enforced has not been given proper notice of the appointment of an arbitrator or of the arbitration or for other reasons was unable to present its case. Section 55 provides certain impediments that shall be considered by the court *ex officio*.

5. In the case NJA 2010 p. 219, the Supreme Court stated that for reasons of due process, very strict notice requirements apply to the fundamental fact that arbitration proceedings are being opened (the filing of a request for arbitration), and this notice has actually reached the counterparty. Further, the Supreme Court stated that if the arbitration award or other documentation does not establish that the counterparty has received the notice, or if the counterparty can present evidence that establishes considerable doubt as to whether it has received the notice, then it must generally be deemed that there are impediments to recognition and enforcement under item 2 of Section 54 of the Swedish Arbitration Act. However, if it is nevertheless clear that the counterparty has been able to present its case in the arbitration, then the situation is, according to the Supreme Court, different.

6. Subway has submitted and referenced substantial new evidence to show that Mr. E has received the notice as well as subsequent documentation in the arbitration. Nothing prevents new evidence being submitted in proceedings before the Supreme Court (cf. Lars Welamsson and Johan Munck, *Processen i hovrätt och Högsta domstolen, Rättegång VI*, 4<sup>th</sup> ed. 2011, p. 127 f.).

7. Among other things, Subway has referenced evidence establishing that e-mails concerning the arbitration have been sent to an e-mail address which contains Mr. E's name. While it is true that Mr. E has stated that he does not use e-mail and that he consequently has not received any e-mails concerning the arbitration, the investigation has established that he himself has used the e-mail account at later points in time. Mr. E's assertion thus does not give grounds to assume that he would have been unaware of the e-mails sent to him concerning the arbitration. Already this fact entails that Mr. E shall be deemed to have been notified about the arbitration in such a fashion that he has been granted the opportunity to present his case in the arbitration (cf. the case of 2010).

8. Against this background, the Supreme Court concludes that Mr. E's assertion does not prevent the recognition and enforcement of the arbitration award. There

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are no other grounds to reject Subway's motion. Thus, Subway's appeal shall be granted.

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[ILLEGIBLE SIGNATURES]

The decision has been made by: Supreme Court Justices SL, EN, GT, SJ and LE  
(reporting Justice)

Reporting Judge Referee: ARK