

**BRIEFING NOTE**

***CBS v CBP* [2021] SGCA 4 – Is There a Right for Witnesses to be Heard in Arbitration Proceedings?**

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**Introduction**

Arbitration proceedings are known to be flexible and fluid. The rules of many top arbitration institutions set out wide powers for arbitrators to determine the arbitration procedure so long as it leads to a fair, expeditious, economical and final resolution of the dispute.

Yet, how much discretion may an arbitrator exercise before the arbitration procedure impacts on the rules of natural justice? In *CBS v CBP*, the arbitrator's decision to obviate an oral hearing of witness evidence constituted a breach of natural justice. The arbitral award was set aside.

In this briefing note, we will look at the *CBS v CBP* judgment and share our insights on the right of witnesses to be heard in arbitration proceedings.

**Background**

In *CBS v CBP*, the buyer contracted to purchase coal from the seller. The seller assigned the trade receivables to the bank. The buyer failed to make payment for the coal. The bank commenced arbitration proceedings.

The buyer submitted a list of witnesses and asked for an oral hearing of witness evidence. The bank submitted that a hearing could be held for oral submissions only (but not the taking of oral evidence from witnesses). The arbitrator asked the buyer to provide witness statements before deciding on whether to allow the taking of oral evidence from witnesses. When the buyer failed to do so, the arbitrator proceeded to render an award following a hearing of oral submissions only (without hearing witness evidence).

**Decision of the Court of Appeal**

One of the issues was whether the failure to permit an oral hearing of the buyer's witness evidence constituted a breach of natural justice.

The court determined that parties to arbitration proceedings shall have a 'full opportunity' of presenting their case. However, this 'full opportunity' is not unlimited. Arbitrators may limit the oral examination of witnesses as part of their general case management powers. In doing so, an arbitrator must balance the considerations of reasonableness, efficiency and fairness.

Having considered the facts and circumstances of this case, the court held that there was a breach of natural justice. This was because the buyer's case hinged on whether the parties made an oral agreement to vary the terms of the agreement to purchase coal. Accordingly, oral evidence of witnesses was important. To require the buyer to submit witness statements before being accorded an oral hearing where witness evidence may be heard was not right.

In this regard, the court concluded that the denial of all witness testimonies from the buyer constituted a clear breach of natural justice.

### **Implications**

*CBS v CBP* tells us that arbitrators may not exclude all witness testimonies in circumstances where the dispute turns on such witness evidence. What is less clear, however, is the extent to which arbitrators may exclude some witness testimonies.

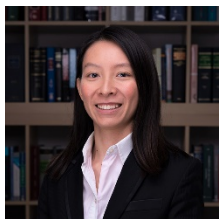
The court conceded that courts are generally deferential to arbitrators' decisions on procedural matters. For example, arbitrators may exclude evidence from multiple witnesses if the evidence is repetitive or of little/no relevance to the issues. The question then is, how far may an arbitrator go before decisions on procedural matters are deemed a serious breach of natural justice? Unfortunately, it appears that there is no fixed answer to this question.

### **How We May Assist**

As arbitration specialists, we advise and represent parties on domestic and international arbitration proceedings. We pride ourselves with delivering top quality advice and representation that best advances our clients' commercial interest in a cost-effective manner.

To find out more about how we can assist you, please reach out to any member of our team.

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