

U.S. District Court for District of Columbia Declines to Vacate LCIA Award Against Djibouti: Doraleh Container Terminal v Republic of Djibouti

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This case¹, heard before the U.S. District Court for the District of Columbia (“the court”), concerns the enforcement of an arbitral award against the Republic of Djibouti in favor of Doraleh Container Terminal SA (“DCT”), arising out of a dispute over the development and operation of a port. Parties entered into a Concession Agreement where DCT agreed to build and develop a new international container terminal on the Red Sea in Doraleh, Djibouti, in exchange for DCT’s exclusive right to handle container shipping in Djibouti and payment of royalties. The agreement also provided for arbitration of any dispute between the parties in London under LCIA Rules if it could not be amicably settled.

A dispute arose, Djibouti commenced arbitration, DCT made a counterclaim and ultimately, an award was issued in favor of DCT. DCT commenced this action in the District of Columbia to enforce the award.

Djibouti sought to vacate the award, arguing that (i) the tribunal exceeded its authority (ii) the tribunal violated Djibouti’s due process rights and (iii) the award would be contrary to U.S. public policy if enforced.

The court rejected all of Djibouti’s arguments and granted DCT’s petition to confirm the award. The court did not accept Djibouti’s argument that the court lacked subject matter jurisdiction over the petition.

In respect of the tribunal’s authority, the court found that the dispute resolution clause in the parties’ contract was broad enough to encompass the counterclaims raised by DCT, and that the tribunal did not exceed its authority by deciding on those counterclaims.

There were no surprises in this decision. Addressing Djibouti’s claim of violation of due process, the court found that Djibouti had actual notice of the proceedings and was given an opportunity to be heard, but chose not to participate. Therefore, the court held that Djibouti’s due process rights were not violated. Finally, with respect to Djibouti’s argument that enforcing the award would be contrary to U.S. public policy, the court held

that this argument failed because a purely compensatory award does not violate U.S. public policy. The court noted that Djibouti’s argument relied solely on a case involving specific performance, which was not applicable here.

This case is significant because it reinforces the principle of deference to arbitral awards under the New York Convention. The court emphasized the strong public policy in favor of enforcing arbitral awards and noted that a party seeking to vacate an award faces a heavy burden of proof. The court also clarified that due process rights are satisfied by actual notice and an opportunity to be heard, and that a party’s failure to participate in the proceedings will not be grounds for vacating the award. A party who takes the risk by not participating in arbitration proceedings may be bound by the outcome of the arbitration even if they disagree with the result.

This case also reinforces the principle of finality of arbitration awards and the limited grounds upon which they can be challenged. The court’s decision emphasizes that challenges to an arbitral award must be based on specific, narrow grounds provided under the New York Convention, and not on a general dissatisfaction with the award. The court pointed out that its discretion in refusing to enforce an award could only be on the grounds explicitly set forth under Article V of the Convention.

The court discredited what it called Djibouti’s “disguised attempt to challenge the award on grounds that could have been brought before the arbitrator”.² It noted that despite being invited to comment on DCT’s authority, Djibouti declined to respond and instead raised its argument of lack of authority before the court for the first time. In light of this, the court did not accept Djibouti’s argument as an authentic challenge to the Court’s subject matter jurisdiction.

This outcome is very much in line with the consistent approach of U.S. courts to a very narrow interpretation of

¹ 2023 WL 2016934. At the date of writing, this decision is pending appeal.

² *Id.*, 5

the scope of the few grounds for declining to enforce an arbitral award under the New York Convention. This case serves as a warning of the consequences that follow should a party choose not to participate in an arbitration when given the opportunity. A party's refusal to participate will not be looked upon sympathetically by the court as such a lost opportunity is "self-inflicted."³ Parties should therefore use every opportunity to raise all arguments before the arbitral tribunal and not expect the court to entertain new arguments which could have been raised before the arbitral tribunal.

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³ *Id.*, 7