NEW SQUARE Chambers

July 2025

JSC KAZAN OIL PLANT V AVES TRADE DMCC [2025] EWHC 2713 (Comm)

Chloe Rixon

On 21 October 2025, the Commercial Court (King's Bench Division), among other things, provided clarification as to the 28-day time limitation period for challenges or appeals to GAFTA and FOSFA appeal awards pursuant to s.70(3) of the Arbitration Act 1996.

FACTS

On 13 August 2020, the Claimant as the seller and the Defendant as the buyer entered into a contract in respect of 48,000 metric tonnes of crude sunflower oil, the contract being subject to the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats Association Limited ("**FOSFA**").

A dispute arose, and was referred to FOSFA arbitration. The Claimant appealed the FOSFA first-tier tribunal award in favour of the Defendant to the FOSFA Board of Appeal, who issued an Arbitration Appeal Award dated 26 March 2025 ("**the Appeal Award**"). The parties were informed of the Appeal Award on 26 March 2025 by email, noting an outstanding balance of £20,466.94 to be paid by the Claimant.

The Claimant, as a Russian entity, encountered difficulties paying the Appeal Award due to sanctions. This payment was ultimately paid by an intermediary in the UAE on 8 April 2025. Following such, on 10 April 2025, FOSFA released the Appeal Award.

On 8 May 2025, the Claimant issued its claim to appeal the Appeal Award pursuant to s.69 of the Arbitration Act 1996 ("**the 1996 Act**"). The Claimant's position was that the 28-day period to challenge the Appeal Award began when the Appeal Award was issued, so the deadline was 8 May 2025. However, the Defendant's position was that the 28-day deadline in fact started from the date the Appeal Award was issued, so the Claimant's claim was out of time.

As such, the Court was faced with two questions:

1. Was the Claimant's claim form issued within time under section 70(3) of the Arbitration Act 1996?
2. If not, should time be extended under section 80(5)?

LAW

The facts were all before the effective date of the Arbitration Act 2025, as such s.70 of the 1996 Act provided:

> *"**70 Challenge or appeal: supplementary provisions.***
> *(1) The following provisions apply to an application or appeal under section 67, 68 or 69.*
> *(2) An application or appeal may not be brought if the applicant or appellant has not first exhausted—*
> *(a) any available arbitral process of appeal or review, and*
> *(b) any available recourse under section 57 (correction of award or additional award).*
> *(3) Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process."*

Only two non-binding authorities were found to have previously directly addressed the running time of s.70(3) of the 1996 Act in the context of an arbitration appeal:

- *UR Power GmbH v Kuok Oils and Grains Pte Ltd* [2009] EWHC 1940 (Comm), at [58]-[60]; and
- *PEC Ltd v Asia Golden Rice Co Ltd* [2012] EWHC 846 (Comm).

DECISION

Bright J found that Gross J in *UR Power* and Hamblen J in *PEC* essentially agreed: any challenge under the 1996 Act to an appeal award must run from the date of the appeal award [at 19]. He noted how this was not mysterious, because any challenge under ss.67-69 of the 1996 Act must relate to an award, so it is entirely natural for the default running time to be in reference to the date of the award [at 20].

Bright J accordingly held that the 28-day time limit to challenge the Appeal Award began on 26 March 2025, the date the Appeal Award was issued, not when it was received. Therefore, the Claimant's claim form was not issued within time under the first limb of s.70(3) of the 1996 Act, it being found to be the only relevant limb here as there was no available arbitral process of appeal or review.

Though not reviewed in full for the purpose of this Case Report, it is noted that the Claimant was not granted an extension of time under s.80(5) of the 1996 Act by applying the factors summarised by Colman J in *AOOT Kalmneft v Glencore International AG* [2002] 1 Lloyd's Rep 128 [at 59]. Bright J noted that the 15-day delay, being 50% of the time limit, though not enormous was neither trifling, so the critical factor was whether the Claimant acted reasonably [at 33-34]. Though the difficulty in remitting the required funds to FOSFA was reasonable because of the sanctions, this did not take up the entire 28-day period, and the Claimant failed to use the remaining 13 days effectively [at 36].

TAKE AWAY COMMENT

This decision provides some necessary clarity in an area which was severely lacking authority, with no previous binding decisions on whether the 28-day time limit in s.70(3) if the 1996 Act ran from the date of the appeal award itself or the date of receipt.

Though the Court have opted to resolve this question in favour of the arguably stricter approach, in that the date of the appeal award cannot feasibly be later than the date of its receipt, it seems clear that this is the fairest and most certain outcome the Court could come to. This is because the date of the award is the only incontrovertible date, so it avoids there being uncertainty. Additionally, in the right circumstances, s.80(5) of the 1996 Act could be used to tackle any unfairness, it is simply that such unfairness did not arise here.

Accordingly, time is of the essence, as it so often always is.

The Arbitration Act 2025 does not change the relevant wording of s.70(3) of the 1996 Act, so the decision will continue to be of welcome clarity.

Chloe Rixon

Chloe.Rixon@newsquarechambers.co.uk

newsquarechambers.co.uk/barrister/chloe-rixon/

linkedin.com/in/chloe-rixon-42375b11a/