

## An Arbitral Award

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**ABSTRACT:** The Arbitration and Conciliation Act Cap A18 LFN, 2004 did not define an award and as such the term has been given several definitions by different authors, scholars and commentators. An Arbitral Award is a decision of an Arbitral Tribunal delivered by the tribunal after its proceedings. The valid ingredients of a valid award are provided in section 26 of the Act which includes that the arbitral tribunal shall state the reasons for the award, the date on which the award was made, the place it was made, and it shall be written and signed by the arbitrators. The different types of awards are. Consent awards, final awards, interim awards, partial awards, interlocutory awards, self-executory awards, and additional awards. An award once it is rendered and published until it is set aside by a court of competent jurisdiction is final and binding on all the parties in the arbitration. The award shall be published to the parties alone. The award can only be made public with the consent of the parties to the arbitration agreement. This is because of the high level of confidentiality required in arbitration proceedings. The award must be final, conclusive, certain, and capable of enforcement.

**KEYWORDS:** An Award, Arbitration, Arbitrator(S), Arbitral Tribunal, Arbitration and Conciliation Act of Nigeria.

### I. Introduction

The Act does not define an award. The term has been given several definitions by several authors, scholars and commentators.

According to Russell

“Arbitral award is a final determination of a particular issue of claim in arbitration.<sup>1</sup>

In *Maritime Academy of Nig. v A.Q.S*, the court held thus;

An arbitral award extinguishes any right of action of former matters in difference between the parties thus, the other party's claims in the substantive and stated matter becomes extinguished when the arbitral award is made.<sup>2</sup>

Mustil and Boyd in writing about arbitral award stated that:

The arbitrator should in delivering his award determine whether award should be interim or final. In other words should it decide only one or some of the issues in the case or should it dispose of all of them? He must also consider whether the award should be in such a form as to enable a question of law to be brought before the court for a decision<sup>3</sup>

Also section 24 of the Act provides that:

1. In an arbitral tribunal composing more than one arbitrator, any decision of the tribunal shall, unless otherwise agreed by the parties, be made by a majority of all its members.
2. In any arbitral tribunal the presiding arbitrator may, if so authorized by the parties or all the members of the arbitral tribunal, decide questions relating to the procedure to be followed at the arbitral proceedings.<sup>4</sup>

Award simply means the decisions of arbitral tribunal.<sup>5</sup>

<sup>1</sup>D Simion, Russell on Arbitration (21<sup>st</sup>edn, Gloucester: Sweet and Maxwell, 2001) p 249. Quoted in J Orojo and Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria*(Lagos: Mbai and Associates Nigeria Limited, 1999) p 238

<sup>2</sup>(2008) AllFWLR (Pt 406) 1892.

<sup>3</sup>Mustill&Boyd, *Commercial Arbitration* (London, 1989) P 303

<sup>4</sup> Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria, 2004

<sup>5</sup> Greg C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria* (1<sup>st</sup>edn Enugu: Lyke Ventures Press, 2004) p 206

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It also means the decision of the arbitral tribunal based on the evidence adduced before it by the parties. The arbitral award must be final and must totally dispose of all the issues raised by the parties in the arbitral proceedings. This was the decision in the case of *Taylor Woodrow of Nigeria Limited v Suddeutsche Etna-werk GMBH*.<sup>6</sup>

The parties are at liberty to even settle their differences outside the arbitral tribunal and thereafter request the tribunal to record the settlement in the form of an award on the terms agreed by the parties. This is popularly referred to as consent award.<sup>7</sup>

Immediately the tribunal makes its final award, it becomes *functus officio* and ceases to have power to deal with the matter again unless for reasons set out in Section 28 of the Act.

The arbitral award shall be in writing, shall state the reason(s) for the award, must be signed by the arbitrators and where more than one arbitrator arbitrated in the matter, the signature of majority shall suffice but reason has to be given for the absence of other signature(s). It must also bear the date on which it was made and shall be published to the parties alone.<sup>8</sup> The award can only be made public with the consent of the parties to the arbitration agreement. This is because of the high level of confidentiality required in arbitration proceedings. The award must be final, conclusive, certain, and capable of enforcement.

### II. Valid Ingredients of Arbitral Award

The ingredients of an arbitral award are provided for by virtue of section 26 of the Act. The section provides that;

1. Any award made by the arbitral tribunal shall be in writing and signed by the arbitrators.
2. Where the arbitral tribunal comprises of more than one arbitrator the signatures of a majority of all the members of the arbitral tribunal shall suffice if the reason for the absence of any signature is stated.
3. The arbitral tribunal shall state on the award;
  - a. The reasons upon which it is based unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 25 of this Act.
  - b. The date it was made
  - c. The place of the arbitration as agreed or determined under section 16(1) of this Act which place shall be deemed to be the place where the award was made.
4. A copy of the award made and signed by the arbitrators in accordance with subsections (1) and (2) of this section, shall be delivered to each party.

The English Arbitration Act also has a similar provision. The English Arbitration Act in its section 52 provides that:

1. The parties are free to agree on the form of an award
2. If or to the extent that there is no such agreement, the following provisions apply;
3. The award shall be in writing signed by all those assenting to the award,
4. The award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons.
5. The award shall state the seat of the arbitration and the date when the award is made.<sup>9</sup>

### III. The Binding Effect of an Arbitral Award

Award once it is made, rendered and published until it is set aside by a court of competent jurisdiction is final and binding on all the parties in the arbitration.

In the case of *Ezerioha & ors v Ihezuo*,<sup>10</sup> it was held that:

Acceptance of arbitral award can be proved by evidence other than the parties signing the arbitral award. In the instant case the evidence of the parties established that the defendants accepted the arbitral award, therefore, the trial court rightly held that they were bound by it.

In the case of *Kano State Urban Development Board v Construction Company Limited*, it was held that:

The effect of an award by an arbitrator on the parties concerned is such as the agreement of reference expressly or by implication preserves. Where no contrary intention is expressed and where such a provision is applicable. Every arbitration agreement is deemed to contain a provision that the award is to be final and binding on the parties and any persons claiming under them respectively.<sup>11</sup>

<sup>6</sup> (1993) 4 NWLR 127; 4SCNJ 32

<sup>7</sup> S. 25 of the Act

<sup>8</sup> Ss. 26(1) & (2); 27 (1) and (3) of the Act

<sup>9</sup> English Arbitration Act 1996; S. 52

<sup>10</sup> (2010) All FWLR (Pt540) 1259

<sup>11</sup> (1990) LPELR 1659 (SC); (1990) NWLR (Pt 1421)1

#### IV. Types of Awards

We have different types of awards, namely, consent awards, final awards, interim awards, partial awards, interlocutory awards, self-executory awards, and additional awards.

1. **Consent Awards:** The parties have the right during the pendency of the proceedings to settle their disputes by themselves and subsequently request the arbitral tribunal to record the terms of settlement in accordance with the provisions of section 26 of the Act. Section 25 of the Act provides for consent award. The tribunal has the right if requested by the parties to record the consent award or refuse same if the award is contrary to public policy or is contrary to law or both.  
If the tribunal accepts to record the consent award, it has no right to alter the terms upon which the parties agreed upon. The consent award automatically becomes the final award in the matter.  
The Tribunal is entitled to its cost regardless of the fact that the award is a product of settlement by the parties. It could happen that the cost may not be as it could have been if the tribunal proceedings progressed to its conclusion on its own.
2. **Final Awards:** Is an award, which is final in nature in that it decides conclusively all the issues submitted to the tribunal. Once an arbitral tribunal makes a final award, the tribunal becomes *functus officio* and ceases to have any jurisdiction and competence to deal with the dispute.
3. **Interim Award:** Is a type of award, which the tribunal may make in the course of its proceedings pending the final determination of the issues in dispute. All decisions taken by the tribunal in respect of such issues as to its jurisdiction, competence of any of the parties to be appointed an arbitrator, and the protection of the res during the pendency of the matter before the tribunal are interim awards because they are made in the course of the arbitral tribunal proceedings; they are also final because they are conclusive on the issues decided.
4. **Partial Award:** Is an award which disposes of one or more issues in the matter between the parties, such as payment on account to be made in respect of particular claim(s). It is referred to as partial award because it deals, not with the substantive issue before the tribunal but with matters which are necessarily connected with the main issue.
5. **Interlocutory Award:** Is an award that deals with procedural matters like issues of applicable laws. It may be proper to refer to this award as an arbitral tribunal order rather than an award because it usually comes in form of directory procedure of the arbitral proceedings.
6. **Self-Executory Awards:** These are awards which are merely declaratory in nature. They are not such awards as either of the parties can execute against the other. This type of award may result where parties are in doubt as to their right and liabilities in a particular contract; also where parties are not in agreement on whether there was a hundred percent discharge of the contractual obligation by performance. Incidental claim follows this type of award so that it could be executed.
7. **Additional Awards:** Is an award made by the tribunal at the request of any of the parties before it after the final award has been made as in section 28 of the Act.

The arbitral tribunal has the right on its own motion or at the instance of either of the parties to interpret or correct an award or even make an additional award pursuant to the provisions of section 28 of the Act. The arbitrators are not entitled to charge additional or further fees when they undertake any act pursuant to section 28 or Article 35 to 37 of the Act. This is provided for in Article 40 (4) of the Arbitration Rules. The question is who pays the bill of expenses incurred during this period if the making of additional award takes long time and expenses. It is not envisaged that this may happen as what is often required in the making of additional award is minimal and small. However, where it takes undue time and cost, the parties may be made to bear the cost since the provision of Article 40 (4) of the Act is not mandatory.

#### V. Publication of Awards

The arbitrators are by law required to publish the award to the parties alone. The award can only be made public with the consent of the parties to the arbitration agreement. This is because of the high level of confidentiality required in arbitration proceedings. Parties who have gone before the arbitrators in arbitral proceedings intend to maintain their privacy and protect their business secrets.<sup>12</sup>

#### VI. Characteristics of an Award

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<sup>12</sup> Patrick Neil, *Confidentiality in Arbitration*, Arbitration International of London Court of International Arbitration, Vol. 2, No. 3, 1996, 287 at 288.

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- a. The award should take the form prescribed by the parties, the applicable law, or the practice of the Centre where it is conventional award.
- b. The award must also be final in terms, meaning that it must be conclusive as to all issues submitted to the arbitral tribunal
- c. It must not be contingent and conditional
- d. It must also be definite, certain and unambiguous for it to be enforced.
- e. It must be dispositive and this means that an award must constitute an effective determination of the issues in dispute
- f. The award should not in any way request the parties to perform an illegal act or an act which is contrary to public policy.

## **VII. Conclusion**

Arbitral award is a decision of an arbitral tribunal delivered by the tribunal after its proceedings. It is said to be a decision because it is delivered after hearing the parties in a judicial manner. The award of the arbitrators is a judgment as it is a determination of the matter referred to the arbitrators. The award must be final, conclusive, unambiguous, and capable of enforcement.

The arbitral tribunal shall state the date on which the award was made, the place it was made, and it shall be signed by the arbitrators. It shall be published to the parties alone. We have different types of awards, namely, interim awards, partial awards, interlocutory awards, self-executory awards, and additional awards.

The end result of an arbitration proceeding is a final and binding award. The court has held in *Ras Pal Gazi v FCDA*<sup>13</sup> that once an issue had been decided upon by a validly constituted arbitration tribunal, the parties cannot be allowed thereafter to reopen it. The reason is that like a judgment of the court, the point so decided through arbitration is *res judicata*, between the parties.

Furthermore, in the case of *Commerce Assurance Limited v Alli*,<sup>14</sup> the court also held that a person who duly submitted to arbitration cannot return to the court to ask it to review an award because it is unfavourable.

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<sup>13</sup> (2001) 7 SCM 195

<sup>14</sup> (1992) 4 SCNJ 145