

PCA CASE NO. 2016-37

**IN THE MATTER OF AN ARBITRATION COMMENCED PURSUANT TO
THE ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH AND
THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ARBITRATION RULES 2010**

between:

INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION
(the "Claimants")

- and -


("Respondent", and with Claimants, the "Parties")

TERMINATION ORDER

17 July 2018

The Tribunal

Mr Donald Francis Donovan (President)
Mr Graham Dunning QC
Professor Hans Petter Graver

Registry

Permanent Court of Arbitration
Tribunal Secretary: Ms Judith Levine

Pursuant to Paragraph 5.1 of the Terms of Appointment and Article 36(1) of the 2010 UNCITRAL Rules, the Tribunal issues the following Termination Order, a draft of which was sent to the Parties for their review.

I. THE PARTIES AND THEIR COUNSEL

1. The Claimants are (i) IndustriALL Global Union, an association of independent trade unions, having its registered address at 54 bis, route des Acacias, Case Postale 1516, 1227 Geneva, Switzerland and (ii) UNI Global Union, a global union federation, having its registered address at 8-10 Avenue Reverdil, CH-1260 Nyon, Switzerland.
2. The Claimants are represented in this arbitration by Ms Marney L. Cheek and Ms Clovis Trevino of Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, USA; Ms Erin Thomas, Covington & Burling LLP, The New York Times Building, 620 Eighth Avenue, New York, NY 10018-1405, USA; and Mr Albert Marsman, De Brauw Blackstone Westbroek N.V., Claude Debussylaan 80, 1082 MD Amsterdam, the Netherlands.
3. The Respondent is [REDACTED], a company constituted under the laws of [REDACTED], having its registered address at [REDACTED].
4. The Respondent is represented by [REDACTED]

II. PROCEDURAL BACKGROUND

5. On 11 October 2016, the Claimants submitted a Notice of Arbitration to the Respondent under the UNCITRAL Rules and pursuant to Article 5 of the Accord on Fire and Building Safety in Bangladesh of 13 May 2013 (the “**Accord**”) and Article 9 of the Dispute Resolution Process as agreed by the Accord’s Steering Committee on 10 April 2014.
6. In their Notice of Arbitration, the Claimants notified the Respondent of their appointment of Professor Hans Petter Graver, a Norwegian national, as the first arbitrator pursuant to Article 9(1) of the UNCITRAL Rules.
7. On 10 November 2016, the Respondent submitted its Response to the Claimants’ Notice of Arbitration in which the Respondent appointed Mr Graham Dunning QC, a British national, as the second arbitrator pursuant to Article 9(1) of the UNCITRAL Rules.
8. On 8 July 2016, the Claimants also submitted a Notice of Arbitration to [REDACTED] pursuant to the same provisions of the legal instruments listed in Paragraph 5 above. Those proceedings are being administered by the Permanent Court of Arbitration (“**PCA**”) as PCA Case No. 2016-36.
9. On 5 December 2016, the Parties jointly wrote to the PCA noting that they had “failed to reach an agreement on the appointment of a presiding arbitrator” and requesting that the Secretary-General of the PCA act as appointing authority in accordance with the UNCITRAL Rules. On the same day, the Claimants, the Respondent, and [REDACTED] recorded their agreement that the two cases (PCA Cases No. 2016-36 and 2016-37), “while remaining formally distinct, will be heard by the same arbitral tribunal”.

10. On 3 February 2017, the Secretary-General of the PCA appointed Mr Donald Francis Donovan, a national of the United States of America, as the presiding arbitrator in accordance with the UNCITRAL Rules and the procedures agreed by the Parties.
11. At a procedural meeting held in London on 17 March 2017, the Tribunal and the Parties signed the Terms of Appointment confirming the procedural framework of the proceedings, including the composition of the Tribunal, the formalization of the PCA's role as registry, and the appointment of Ms Judith Levine as Tribunal Secretary. The Terms of Appointment provided that the Terms of Appointment and any Award rendered in the respective cases will be formally separate but for reasons of procedural economy, other documents such as correspondence and procedural orders will not be issued separately. The Terms of Appointment also provided, with respect to coordination of the proceedings that "[f]or reasons of convenience and practicality, the deposit maintained by the PCA will be the same for both PCA Case No. 2016-36 and PCA Case No. 2016-37" and that "[t]he Tribunal will operate initially on the presumption that fees and expenses will be split evenly between the two cases, but the Tribunal shall retain ultimate discretion to vary the allocation of costs amongst the parties in the two disputes as appropriate in the circumstances."
12. On 22 March 2017, the Parties in PCA Case No. 2016-37 were invited to establish an initial deposit of EUR 150,000 (EUR 75,000 from each side). On the same day, the Parties in PCA Case No. 2016-36 were invited to establish a deposit of the same amount.
13. On 19 April 2017, the Tribunal issued Procedural Order No. 1 in PCA Cases No. 2016-36 and 2016-37, which included a schedule for briefing on the Respondent's admissibility objection and the extent of transparency and confidentiality to be adopted in the arbitrations (together, the "**Preliminary Issues**"). Procedural Order No. 1 provided that the next phase of the arbitration, in which the Tribunal would determine liability along with specified issues of remedies (the "**Liability-Plus Phase**") would commence on a parallel track to the resolution of the Preliminary Issues, in order to facilitate the efficient resolution of the dispute.
14. On 24 April 2017, the PCA acknowledged receipt of EUR 150,000 from the Claimants, representing full payment of their share of the initial deposit for PCA Case No. 2016-36 and PCA Case No. 2016-37.
15. In accordance with Procedural Order No. 1, the Parties filed a first round of written submissions on the Preliminary Issues on 24 April 2017.
16. On 4 May 2017, the PCA acknowledged receipt of EUR 75,000 from the Respondent, representing full payment of its share of the initial deposit for PCA Case No. 2016-37 and receipt of the same amount from ██████████, respondent in PCA Case No. 2016-36, representing full payment of its share of the initial deposit for PCA Case No. 2016-36.
17. In accordance with Procedural Order No. 1, the Parties filed a reply round of written submissions on the Preliminary Issues on 15 May 2017.
18. On 15 June 2017, the Parties exchanged their respective proposals as to the scope of the Liability-Plus Phase.
19. On 16 June 2017, the Claimants submitted their Statement of Claim, accompanied by evidence and expert reports. On 3 August 2017, the Claimants filed an amended version of the Statement of Claim.
20. On 4 September 2017, the Tribunal issued Procedural Order No. 2 in PCA Cases No. 2016-36 and 2016-37. The Tribunal rejected the Respondents' admissibility objection and confirmed jurisdiction over the Claimants' claims. Further, the Tribunal issued guidelines on confidentiality and

transparency and directed the Parties to confer and develop a protocol in line with such guidelines. In line with Procedural Order No. 2, the Tribunal authorised the PCA to issue a Press Release concerning the nature and progress of proceedings.

21. On 19 September 2017, the Tribunal issued Procedural Order No. 3 in PCA Cases No. 2016-36 and 2016-37 on the scope of the Liability-Plus Phase.
22. On 29 September 2017, the Respondents in PCA Cases No. 2016-36 and 2016-37 submitted their joint Statement of Defence, accompanied by evidence and expert reports.
23. On 9 October 2017, the Tribunal issued Procedural Order No. 4 in PCA Cases No. 2016-36 and 2016-37, adopting a Protocol on Confidentiality and Transparency and a Model Confidentiality Undertaking.
24. By letters dated 24 October 2017, the Parties submitted reasoned applications to the Tribunal for an order on production of documents.
25. On 7 November 2017, the Tribunal issued Procedural Order No. 5 on document production in PCA Cases No. 2016-36 and 2016-37, directing the Parties to produce certain categories of documents by 21 November 2017.
26. On 22 November 2017, the Tribunal issued Procedural Order No. 6 on further issues concerning document production in PCA Cases No. 2016-36 and 2016-37.

III. SETTLEMENT NEGOTIATIONS

27. On 23 November 2017, the parties to PCA Case No. 2016-36 informed the Tribunal and the PCA that the Parties had agreed to suspend proceedings “including all deadlines related to document production” for 21 days and requested that “no further work be carried out by the PCA with regard to the above-captioned matter during this 21-day period.” The parties to PCA Case No. 2016-36 clarified that “there is no change in status to the other case Claimants have pending before this Tribunal, PCA Case No. 2016-37.”
28. On 1 December 2017, the Tribunal issued Procedural Order No. 7 in PCA Case No. 2016-37, adopting adjustments to the procedural schedule.
29. On 15 December 2017, the parties to PCA Case No. 2016-36 informed the Tribunal and the PCA that they had entered into a settlement agreement with respect to PCA Case No. 2016-36 and had agreed to suspend that arbitration “including all deadlines on the procedural calendar, until April 30, 2018, the date upon which certain conditions precedent must be met.” The parties to PCA Case No. 2016-36 requested that “as of December 15, 2017, the proceedings in PCA Case No. 2016-36 be suspended until May 15, 2018, and that no further work be carried out by the PCA until that date.” The parties noted that “the stay may be lifted by notice from any party” after 15 May 2018. The parties to PCA Case No. 2016-36 confirmed that “there is no change in status to the other case Claimants have pending before this Tribunal, PCA Case No. 2016-37.”
30. On 9 January 2018, the Claimants in PCA Case No. 2016-37 submitted their Reply Memorial, accompanied by evidence and expert reports.
31. On 10 January 2018, the Tribunal issued Procedural Order No. 8 in PCA Case No. 2016-37 on further issues concerning document production.

32. On 18 January 2018, the Parties to PCA Case No. 2016-37 informed the Tribunal and the PCA that they had entered into a settlement agreement with respect to this arbitration, PCA Case No. 2016-37, and had agreed to suspend this arbitration “including the March 2018 hearing and all deadlines on the procedural calendar, until April 30, 2018, the date upon which certain conditions precedent must be met.” The Parties to PCA Case No. 2016-37 requested that “as of January 18, 2018, the proceedings in PCA Case No. 2016-37 be suspended until May 15, 2018, and that no further work be carried out by the PCA until that date.” The Parties to PCA Case No. 2016-37 noted that “the stay may be lifted by notice from any party” after 15 May 2018.
33. On 26 June 2018, the Parties to PCA Case No. 2016-37 informed the Tribunal and the PCA that the Respondent had fulfilled its obligations pursuant to the settlement agreement about which the Parties advised the PCA on 18 January 2018. The Parties jointly requested the Tribunal to issue an order for the termination of these proceedings with immediate effect, pursuant to Article 36(1) of the UNCITRAL Rules. The Parties indicated that “the Claimants, on the one hand, and the Respondent, on the other, will each bear 50% of the costs of the PCA and the Tribunal (and be entitled to any refund in those proportions)” and that “the Protocol on Confidentiality and Transparency issued in the Proceedings pursuant to Procedural Order No. 4 should survive the termination of these proceedings and remain in effect.” On the same day, the parties to PCA Case No. 2016-36 submitted a joint request for termination of the proceedings in PCA Case No. 2016-36.

IV. TERMINATION

34. Article 36(1) of the UNCITRAL Rules provides as follows:

If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

35. The Tribunal notes that the Parties did not request to record their settlement in the form of an arbitral award on agreed terms, but rather requested the Tribunal to “issue an order for the termination of these arbitral proceedings (pursuant to Article 36(1) of the UNCITRAL Rules (2010)) with immediate effect.” Consequently, the Tribunal shall adopt a termination order.

36. Article 43(5) of the UNCITRAL Rules provides as follows:

After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

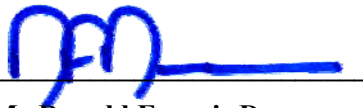
37. The Tribunal will in due course render an accounting to the Parties of the deposits received and instruct the PCA to return any unexpended balance to the Parties.

38. In light of the above, the Tribunal hereby decides, orders, and declares that:

- A. These proceedings are terminated with immediate effect in accordance with Article 36(1) of the UNCITRAL Rules; and
- B. The Protocol on Confidentiality and Transparency issued by the Tribunal pursuant to Procedural Order No. 4 will remain in effect following the termination of these proceedings.

Place of Arbitration, The Hague

Dated, 17 July 2018



Mr Donald Francis Donovan
Presiding Arbitrator