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New Case Alert: Collins & Ors v Wind Energy Holding Company Ltd [2025] EWHC 40 (Comm) (14 January 2025)

[Collins & Ors v Wind Energy Holding Company Ltd \[2025\] EWHC 40 \(Comm\)](#)

Date: 14 January 2025

Key Words:

Arbitration Act 1996, Procedural fairness, Serious irregularity, Freezing order, Legal representation, Adjournment, Admissibility of evidence, Mental health, Claimant inaction, Tribunal discretion, Proactive steps

Summary

This judgment concerns an application to set aside a Final Award in an arbitration due to alleged serious procedural irregularities under s.68 of the Arbitration Act 1996 [1]. The Claimants argued that the arbitrator breached her duties under s.33 [2], by:

- Refusing to adjourn an evidential hearing.
- Declining to admit certain evidence.
- Taking an inappropriate approach to matters in the Final Award.

The court dismissed the claim, finding no serious irregularity occurred [3].

Key Themes:

The key themes in this case are:

1. **Procedural fairness in arbitration:** *Whether the arbitrator conducted the proceedings fairly under s.33 of the Arbitration Act 1996 and Article 14 of the LCIA Rules [2, 69, 72].*
2. **Impact of a freezing order:** *How the freezing order affected the Claimants' ability to fund legal representation [16, 17, 18].*
3. **Legal representation:** *The Claimants' lack of legal representation contributing to perceived procedural unfairness [20-22, 33].*
4. **Adjournment of hearings:** *Examination of the arbitrator's decisions on adjournment of the evidential hearing [2, 78].*
5. **Admissibility of evidence:** *Focus on the arbitrator's decisions to admit or exclude evidence*

[2, 63].

6. **Mental health:** *Consideration of Ms Collins' mental health and its impact on her participation in the arbitration* [16, 17, 59, 60, 67, 68].

Background

- The Claimants initiated arbitration against Wind Energy Holding Company Ltd (WEH) over a letter of indemnity (LOI) and alleged breach of the LOI [4].
- The dispute was linked to related litigation involving a Thai businessman, Mr Suppipat, where the Claimants were also defendants [5].
- The Claimants argued that WEH's board dismissed them to prejudice their defence in the related litigation [6].
- WEH contended that the LOI was void and counterclaimed for legal expenses incurred in the related litigation [7, 10].
- The arbitrator set a procedural timetable, including a final written submission (Sur-Reply) by 14 July 2023 and an evidential hearing scheduled for 12–15 September 2023 [9].
- The Claimants' legal representation withdrew, and they requested an adjournment [17, 28, 32, 33].
- A freezing order in the related litigation was seen by the Claimants as preventing expenditure on legal representation for the arbitration [17].
- The arbitrator denied a stay but extended the deadline for the Sur-Reply; the Claimants did not serve it on time and later withdrew their claim [15].
- The Claimants then sought reinstatement, which was allowed, though the evidential hearing was not adjourned [24, 29].
- A further adjournment was applied for due to the freezing order and lack of representation; a short adjournment moved the hearing to October 2023 [32, 39].
- The Claimants failed to vary the freezing order [41].
- The evidential hearing began on 4 October 2023 without the Claimants present or represented, except for Mr Lakhaney, who attended remotely for cross-examination [63, 65].
- The arbitrator issued her Final Award on 17 November 2023, rejecting the Claimants' claim and allowing WEH's counterclaim [68].

Legal Issues and Analysis

- **Section 33 of the Arbitration Act 1996:** The court considered whether the arbitrator breached her duty under s.33—which requires fair, impartial conduct and a reasonable opportunity for each party to present their case—and found no breach [2, 3, 69, 70, 89].
- **Section 68 of the Arbitration Act 1996:** The court examined if a serious irregularity had affected the arbitration proceedings, particularly regarding the arbitrator's refusal to grant a longer adjournment. It held that there was no serious irregularity [1, 2, 3, 70, 71, 79, 98].
- **The Freezing Order and Legal Representation:** The court reviewed whether the arbitrator should have adopted a more flexible approach given the freezing order's impact on securing legal representation. It concluded that the Claimants' insufficient efforts to address the issue resulted in their lack of representation [80, 85, 86].
- **Adjournment Decisions:** The court considered the arbitrator's decision not to grant further adjournments and determined that this did not deprive the Claimants of a fair hearing, given the circumstances and their failure to act promptly [38, 48, 88, 89].
- **Admissibility of Late Evidence:** The court reviewed the exclusion of some late-filed evidence

by the arbitrator and found that, considering the volume and timing of the submission, the arbitrator had acted fairly [94].

- **Hollington v Hewthorn [1943] KB 587:** Addressing the Claimants' argument that the arbitrator relied on previous findings regarding their credibility, the court held that the arbitrator had made her own independent evaluations and was not bound by prior proceedings [96, 100].
- **Assessment of Evidence:** The court emphasised that its role was not to reassess the evidence or reasons for the award but to determine whether a serious procedural irregularity occurred. It found that the arbitrator had provided sufficient reasons for her award [98, 99, 100].
- **Mental Health:** The court noted the arbitrator's handling of the late communication about Ms Collins' mental health, observing that no adjournment was requested on that basis [90-92].

Conclusion

The court concluded that the Claimants' claim lacked merit and dismissed the challenge to the Final Award [3]. It found that the arbitrator acted fairly and in accordance with her duties under the Arbitration Act 1996 and the LCIA Rules [89]. The Claimants were afforded a fair opportunity to present their case [95], and their issues with legal representation and the freezing order were not sufficient grounds to set aside the award.

Key Takeaway:

A party cannot challenge an arbitral award based on its own inaction or delays in addressing issues like funding and legal representation. Courts will only interfere if there is clear evidence of a serious procedural irregularity causing substantial injustice. The judgment emphasises that parties must proactively ensure effective participation in arbitration and that tribunals have broad discretion to manage proceedings efficiently and fairly. It also highlights that a party seeking an adjournment for medical reasons must promptly notify the tribunal and provide sufficient details explaining why their health prevents attendance.

Parting Thoughts

In Collins & Ors v Wind Energy Holding Company Ltd, the court reinforces the need for active engagement in arbitration. A party's failure to address issues such as funding and legal representation in a timely manner cannot serve as grounds to challenge an arbitral award. Similarly, courts require clear evidence of serious procedural irregularity before intervening. The decision further stresses that parties seeking adjournments on medical grounds must promptly inform the tribunal and furnish adequate explanations for their absence. Overall, the ruling confirms that tribunals have wide discretion to manage proceedings efficiently and fairly.

**#ArbitrationAct1996 #ProceduralFairness #ArbitrationIrregularity #FreezingOrder
#LegalRepresentation #ArbitrationAdjournment #AdmissibilityOfEvidence
#TribunalDiscretion #ClaimantInaction #MentalHealthInArbitration #ProactiveSteps
#ArbitrationLaw #LCIA #Collins #WEH #WindEnergyHoldingCompany**

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Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
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FIDIC Adjudication Panel Member since 2021
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