

Rights, Duties And Civil Liability Of The Umpire Arbitrator

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Abstract

This paper discusses the rights, duties and civil liability of the umpire arbitrator, in a comparative context between Jordanian and Saudi Arbitration Laws. The paper aimed at clarifying the appropriateness of applying the general provisions of arbitrators to the umpire arbitrator, in both Jordanian and Saudi Laws.

The research showed that the umpire arbitrator is needed when the opinions of arbitral tribunal are diverged where no majority of the tribunal. The arbitration tribunal can select an umpire arbitrator to favor one opinion. Such feature is adopted by Saudi Arbitration Law issued by decree 34 in 2012 and its amendments, in contrary to the Jordanian Arbitration Law which doesn't adopt it.

The paper concluded that the umpire arbitrator has rights, and abides by legal duties for solving the dispute, where he/she is responsible for his/her mistakes if they lead to damage against the litigation parties. The paper suggested some recommendations which can be adopted by both Jordanian and Saudi legislators.

Keywords: Arbitration, Umpire Arbitrator, Arbitration Litigation, Civil Liability, Jordan Law, Saudi Law.

Introduction:

The international trade businesses usually require arbitration, to solve the disputes that are results of their transactions. International trade contracts include provisions for adopting arbitration, in case of dispute or conflict among contracting parties on interpreting or implementing the contract, since these contracts differ than the domestic contracts signed by individuals.

The notion of umpire arbitrator stems from the idea that in case of diverging opinions of arbitration tribunal, it has the authority to select an umpire arbitrator, who can choose one opinion of the tribunal members. Such feature is solely adopted by Saudi Arbitration Law No. 34 in 2012, where item (39.2) states that "if opinions of the arbitration tribunals are diverged, where no majority is achieved, the tribunal may select an umpire arbitrator within 15 days of its decision, otherwise the competent court may assign an umpire arbitrator".

On contrary to that law, item (38.a) of Jordanian arbitration law No. 31 in 2001 and its amendments states that: "If the arbitration tribunal is consisted of more than one arbitrator, the tribunal shall take any decision, including the final arbitration award either by unanimously or by majority, unless the parties agree otherwise.

The topic of this research has a practical importance in terms of studying the applied aspects related to the rights, duties and civil liability of the umpire arbitrator, due to the important role he plays in the arbitration of litigation, that enables him to settle the dispute, while if he acts beyond his powers granted by the tribunal, he has to bear the civil liability.

This research aims to demonstrate the appropriateness of applying the general provisions that control the arbitrator, in Jordanian and Saudi Laws, to the umpire arbitrator.

1. Rights of Umpire Arbitrator:

These rights consist of the following:

1.1. The right of accepting or declining the award of arbitral tribunal:

When the arbitration tribunal or the competent court tends to assign an umpire arbitrator, he/she must issue his/her approval explicitly and in a written form included in the document of arbitration (Alatram, 2019, p. 119). He/she should make all efforts for consideration and judgment of the arbitration.

1.2. The right of deserving respect and enforcing his award by all concerned parties:

If the umpire arbitrator accepted the mission of arbitration, it entails obligations and duties, such as the equality among dispute parties, and no bias against or to the favor of any party, while parties should respect and not offend him, since he practices a form of justice (Alluhaibi, 2017, p. 111).

Such respect should also be extended to his judgment and implementation of the mission as long as it was issued through a valid approach, with no legal constraints that prevent the implementation.

He has the same power of the judge (Article 52 of Saudi Arbitrations Law). Therefore it is not permissible to present, or file a case against him before any other claim of invalid arbitration award (Article 50 and Article 49 of Jordanian and Saudi Arbitration Laws respectively).

1.3 The right to resign or not being rejected or dismissed without justification:

1.3.1. The right to resign:

The umpire arbitrator is obligated to proceed with the arbitration mission until complete implementation. In principle, he is not entitled to resign after his approval, except that there may be serious circumstances and reasons that prompt him to submit his resignation at any phase of arbitration of litigation, as he may become unable to pursue considering the dispute, due to the request of one party to dismiss him without justification, which will affect negatively his reputation and force him to quit (Barakat, 1999, p. 120).

1.3.2. The right of not being dismissed or rejected without justification:

Litigation parties have the right to dismiss or reject the umpire arbitrator, whenever the reasons leading to this right are available. But they may request dismissal or rejection without serious or valid reasons, which may affect negatively his reputation and work.

To secure avoiding such cases, the umpire arbitrator should not have any interest in the dispute, at the moment of his appointment and throughout arbitration proceedings. He must declare, in writing to the arbitration parties, all circumstances that would raise justifiable doubts about his impartiality and independence, unless he previously declared to them.

The umpire arbitrator can be banned from considering and hearing the case, even without a request of any arbitration party, as the same case of banning the judge. The umpire arbitrator may not be rejected unless there are circumstances that raise serious doubts about his impartiality or independence, or if he has no qualifications agreed upon by both parties of arbitration.

In this situation no party is permissible to request rejection or dismissal of umpire arbitrator he appointed or participated in the appointment, except for the reasons that became clear after appointment decision. (Article 15.c and Article 17 of Jordanian Arbitration Law; and Article 16 of Saudi Arbitration Law).

If the umpire arbitrator became unable to perform his mission, or didn't perform it, or ceased such performance, that led to an undue delay in the arbitration proceedings, and didn't step down, while the parties didn't agree on his dismissal, therefore the competent court may dismiss him at the request of either party, with an inadmissible verdict, unless the umpire arbitrator was appointed by the competent court.

In this case he will be dismissed upon an agreement of both parties. The dismissed umpire arbitrator has the right to claim compensations if the dismissal has not occurred as a result of his ill performance (Article 19 of Jordan Arbitration Law, and Article 17 of Saudi Arbitration Law).

We believe that the umpire arbitrator may relinquish considering the dispute, if he was rejected, without stating the reason of his request, where this request

is not considered an approval of umpire arbitrator to the validity of reasons that any rejecting party may depend on.

1.4. The right to claim his wage and expenses:

The wage and expenses of umpire arbitrator are the amount accrued to receive against his efforts during consideration of arbitration mission. These elements include travel and accommodation expenses, the expenses of experts, registrars and technicians who were hired by him, where the estimation of these amounts is based on the arbitration period with respect to current norms, if any. (Abdul Rahman, 2018, p. 210).

These expenses are usually determined by an agreement between the dispute parties, the arbitration tribunal and the umpire arbitrator himself, or by the competent authority if the dispute parties and the umpire arbitrator failed to reach a conclusion. (Alahdab, 2014, p. 116). The umpire arbitrator should avoid any unnecessary expenses in order to achieve a fair and urgent approach to solve the dispute (Al Zoubi, 2010, 189).

2. Duties of the Umpire Arbitrator:

2.1. The umpire arbitrator should be impartial and independent:

This duty is considered one of the legal conditions for selecting the umpire arbitrator, where these conditions should be fulfilled from appointment till the end of arbitration.

Upon his acceptance of the mission, the umpire arbitrator should declare any conditions that may raise doubts about his impartiality and independence, unless he declared them previously (Article 15.C of Jordan and Article 16.2 of Jordan and Saudi Arbitration Law respectively).

2.2. The umpire arbitrator should abide by the dispute elements:

The elements of dispute subject to arbitration are the persons, subject and reason that were agreed upon between both parties of arbitration (Al Fadil, 2020, p. 94). The umpire arbitrator shouldn't deal with the topics unaddressed by both parties of dispute.

2.3. The umpire arbitrator should apply the litigation principles that are consistent with the nature of arbitration:

The umpire arbitrator should consider both parties of the dispute on equal basis and enable them to present their cases and submit their defense.

He should abide by the principles of impartiality and equality between the parties of dispute, and be keen to equalize among them by word and gestures, and other stable judicial principle. (Article 25 and Article 27 of Jordan and Saudi Arbitration Law respectively).

2.4. The umpire arbitrator should respect the considerations of public order:

The internal public order consists of procedural and subjective orders if arbitration is domestic, and international order if arbitration is international. This consideration enables the court that considers the invalidity of case, to

avoid spontaneously verdict the invalidity of arbitration if it included any content that contradicts the public order and morals, and Islamic Law in Saudi Arabia.

2.5. The Umpire arbitrator should be adhered to the procedures agreed upon by the litigants.

These procedures are included in the procedural law, but if both arbitration parties didn't agree on this law, the umpire arbitrator may choose arbitration procedures he considers appropriate, provided that he should take into account the provisions of arbitration law, in accordance to (Article 36 and Article 25 of Jordanian and Saudi Arbitration law respectively).

These articles state that both arbitration parties have the right to agree on the procedures applied by arbitration tribunal, including their right to subject these procedures to the rules in force in any arbitration organization or abroad, provided that these procedures should not violate the Islamic Shari'a.

If there was no agreement, the arbitration tribunal has the right to choose the appropriate procedures, without violating the provisions of Islamic Shari'a.

2.6. The Umpire arbitrator should adhere to the statutory law agreed upon between the litigants:

If both arbitration parties didn't agree on the statutory law that is obligatory to solve the dispute, therefore the umpire arbitrator should apply the law he considers the most appropriate to solve the dispute. But he should take into account the terms of contracts and norms related to dispute solution, when making his decision (Altahawi, 2012, p. 243).

2.7. Issuance of judgment that ends the litigation within the time agreed upon between litigants:

The umpire arbitration should disclose the judgment that ends the dispute at the specified time, while if there is no agreement, he should declare the decision within twelve months, unless both dispute parties agreed upon extension, in accordance to Article 37 and Article 40 of Jordanian and Saudi Arbitration Law respectively.

These articles included that "arbitration tribunal should issue the final decision within the period agreed upon by both parties, while if there was no agreement, the decision should be issued within twelve months from the beginning of arbitration procedures.

For all cases, the arbitration tribunal has the right to extend the arbitration period no more than six months, unless both parties agreed upon more than six months. If the decision wasn't issued within this period, any arbitration party may request the competent court to issue order for additional period or terminate the arbitration procedures. Therefore, any party has the right to file a case to the competent court..

3. Civil Liability of Umpire Arbitrator:

3.1. Justifications for determining the liability of umpire arbitrator:

There are a number of justifications for determining the liability of umpire arbitrator, that can be summarized as follows: (Aldouri, 2014, pp. 140-41; Makhluף, 2019, p. 245; Sami, 2018, p. 191)

- a. The motive of parties to arbitrate is their confidence of arbitrator and his fair judgment, since without liability there will be no secure of the arbitrator integrity and fairness.
- b. Annulment of arbitration award doesn't secure compensation of damage caused to the parties, but rather it is considered a damage by itself.
- c. Rejection and dismissal of umpire arbitrator cannot be invoked, as a deterrent penalty for the arbitration, that may present from holding him accountable for his mistakes that led to rejection and dismissal of that arbitrator.

The rejection, for example, may cause harsh damage for the parties worse than that for the umpire arbitrator. Rejection also cannot be conducted unless there is a mistake that justifies it, which in turn requires subjecting the umpire arbitrator to accountability; otherwise it is meaningless to consider the rejection without accountability as a penalty.

- d. Applying the liability of umpire arbitrator is not a justification for those who express their doubts of arbitrator reluctance to arbitrate, otherwise the self employed professionals, like physicians and lawyers, would refrain from their duties, but rather stimulate them to perform their assigned mission efficiently.
- e. Gain is like loss. When the umpire arbitrator practices his mission effectively, he will gain money, while he should bear the result of his bad performance.

3.2. Basis of the umpire Arbitrator Liability:

The mistake of umpire arbitrator is considered failure to comply with a legal obligation, that causes material and moral damage to the parties in the arbitration case or others, that obligate him to bear the liability (Kheir, 2014, p. 112).

The commitment of umpire arbitrator is considered an obligation to make the best efforts according to the rules of arbitration mission, so when it is proved that he committed mistakes, it is not permissible to cover him up, and as such act will be dangerous to arbitration (Alahdab, 2014, p. 289).

The legal systems vary in determining the liability of umpire arbitration. Some systems don't impose any liability on the mistake of umpire arbitrator, while other systems imposed penalties such as the Spanish Law of arbitration of 1998, which focused on the liability of umpire arbitrator, especially in the case of his refusal to issue judgment or delay of issuance without justification (Alahdab, 2014, p. 290).

In both Jordanian and Saudi arbitration laws we don't find any rule related to the liability of umpire arbitrator, but according to the general rules of civil law the arbitrator is liable for his mistakes if they resulted in damage.

The liability of umpire arbitrator is determined upon the type of mistake and the resulting damage caused, whether it was due to his personal conduct or a committed mistake (Abul Wafa, 1988, p. 277).

Among the proven cases of umpire arbitrator liability due to his conduct are:

1. His failure to disclose to the parties the connections and relationships that have an impact on his impartiality (Alahdab, 2014, p. 295).
2. If he clearly exceeded his authorized competence, or ignored a basic rule of procedures, which causes time waste of parties (Alahdab, 2014, p. 295).
3. If he violated one of litigation principles (Alahdab, 2014, p. 295).
4. If he ignored or neglected a fact on purpose or acted in bad intention, that affected the judgment, provided that this act was not due to the defect of one litigant (Amman Arab Arbitration Agreement, 1987, Article 34).
5. If he abstained illegally from issuance of judgment or quit without justification (Abul Wafa, 1988, p. 224).
6. If it was proven that he received a bribe. (Kheir, 2014, p. 135).

Among the cases that proved the liability of the umpire arbitrator due to a mistake he made in the judgment is the case when the judgment was issued and there was no arbitration agreement, or the agreement was void (Alsarayreh, 2015, p. 123).

3.3. Impact of establishing the liability of umpire arbitrator:

The mistake of umpire arbitrator that establishes his liability is the serious mistake by bad intention (Albajad, 2020, p. 193). Such mistake causes real damage, whether for one party or all parties or others. It is necessary that causal relationship between the mistake committed and the damage should be available, since such relationship is one of the basis of liability. Accordingly, the umpire arbitrator is fully liable for reparation of damage (Kheir, 2014, p. 145).

Since the umpire arbitrator has no guarantees established for the judge, he is considered as any person who can be held accountable. When he is questioned about the damage it is sufficient to apply the normal procedures established for questioning the ordinary person (Abul Wafa, 1988, p. 245).

We believe that some elements must be taken into consideration, in case of estimating the impact of mistake by the umpire arbitrator, like his personality, qualification, knowledge and culture.

The liability of umpire arbitrator, if he was a legal advisor, is greater than that of the umpire arbitrator as a physician, for example, in terms of judgment, assuming that the legal advisor is more knowledgeable than the umpire arbitrator as a physician.

4. Conclusions:

1. The umpire arbitrator is an ordinary person, selected by the arbitration tribunal or the competent court, to choose and prefer one opinion of the

arbitration tribunal on the dispute under arbitration in order to take his decision.

2. The umpire arbitrator is an optional means that arbitration tribunal or the competent court seeks his service, to take his decision on the dispute. Both bodies are not obliged legally to seek such service.
3. The umpire arbitrator may be rejected based on the reasons of rejection of the judge.
4. The umpire arbitration may prolong the dispute time, and may not contribute to comparing between opinions.
5. Jordanian arbitration law doesn't state on the umpire arbitrator unlike the Saudi Law that stipulates it, but it doesn't regulate a clear working mechanism for him, and was mentioned only without organizing its provisions.
6. The most important mission of umpire arbitrator is to compare between the opinions presented to him and take his decision upon.
7. In Jordanian and Saudi arbitration Law, there is no rule related to the liability of umpire arbitrator, but according to the general rules of civil law, the umpire arbitrator is liable for his mistakes if they resulted in losses or damage.

5. Recommendations:

5.1 It is necessary to include an article for the umpire arbitrator in Jordanian Arbitration Law in terms of appointment procedures, rights, duties and liabilities.

5.2 The Saudi legislation should regulate the legal provisions related to the umpire arbitrator.

5.3 In the presence of umpire arbitrator in Saudi arbitration law, we recommend that the opinion of umpire arbitrator should be in force, if the opinions were diverged, even if the opinion of majority doesn't agree with, or his opinion is equal with one of the opinions.

5.4 Set additional conditions for the umpire arbitrator like experience and qualifications that determine his opinion and preference.

5.5 Establish several powers for the umpire arbitrator and state his terms of references accurately.

References:

Titles in Arabic are translated

- [1] Abdulrahman, Huda. (2018). The Role of Arbitrator in the Arbitration Dispute and the Limits of his Powers, Dar Mansha'at Alma'aref, Egypt, 1st ed.
- [2] Abulwafa, Ahmad. (1988). Voluntary and Mandatory Arbitration, Mansha'at Alma'aref, Egypt, 5th ed.
- [3] Alahdab, Abdulhamid. (2014). Liability of Arbitrator, Journal of Arab Arbitration, 2.

- [4] Alatram, Ibrahim Ahmad. (2019). Arbitrator in the Saudi Arbitration System, Dar Al-Ijadah, Riyadh, 1st ed.
- [5] Al Bajad, Mohammad bin Nasir. (2020). Arbitration In the Kingdom of Saudi Arabia, Institute of Public Administration, Riyadh, 1st ed.
- [6] Aldouri, Qahtan. (2014). Arbitration Contract in Islamic Jurisprudence and Contemporary Law, Dar Alfurqan for Publishing and Distribution, Jordan, 2nd ed.
- [7] Alfadil, Faisal. (2020). Consics of Saudi Arbitration Law, Riyadh, 1st ed.
- [8] Al-Lhaibi, Hamid,)2017). International Commercial Arbitration, Dar Al Nahda Alarabiya, Egypt, 1st ed.
- [9] Alsarayrah, Mansour. (2015). The Legal System of Arbitration Dispute, Jordanian Bar Association.
- [10] Altahiawi, Muhammad Alsayed. (2012). The Concept of Voluntary and Mandatory Arbitration, Mansha'at Alma'aref, Egypt, 1st ed.
- [11] Al Zoubi, Muhammad. (2010). The Legal System of Arbitration in Jordanian Legislation, House of Culture, Jordan, 2nd ed.
- [12] Amman Arab Agreement for Arbitration. (1987). Arab League.
- [13] Barakat, Ali. (1999). Arbitration Litigation in Egyptian Law and Comparative Law, Dar Alnahda Alarabiyah, Egypt, 1st ed.
- [14] Khair, Adil. (2014). Immunity of Arbitrator Compared to the of Judiciary Immunity, Riyadh.
- [15] Makhoulouf, Ahmad. (2019). International Commercial Arbitration, Institute of Public Administration, Riyadh, 1st ed.
- [16] Sami, Fawzi Muhammad. (2017). International Commercial Arbitration, House of Culture, Jordan.

Legislations:

- [1] Jordanian Arbitration Law No. 31 in 2001 and its Amendments.
- [2] Saudi Arbitration Law No 34 in 2012 and its Amendments.