

# AWARDS OF THE MARITIME ARBITRATION COMMISSION

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In accordance with the rules of procedure of the Maritime Arbitration Commission, if a case is examined by one (sole) arbitrator, it is this arbitrator and only this arbitrator who shall make the award and sign it. If a case is examined by two arbitrators, they shall make the award unanimously and, accordingly, the award shall be signed by the both of them. Should the two arbitrators fail to reach a common opinion in making the award, they shall appoint a third presiding arbitrator (umpire) and the award shall be made by a majority vote. The award in this case shall be signed by the three arbitrators; however, the disagreeing arbitrator has the right to set forth his dissenting opinion which shall be filed with the case.

It follows from what has been mentioned that the award shall always be made in writing, which is provided for in a respective paragraph of the Rules of Procedure of the Maritime Arbitration Commission. However, since the award has to satisfy certain requirements which sometimes practically cannot be met right after the last hearing in a case is over, it goes without saying that a written text of the Award does not come into being all at once.

As a rule the arbitrators announce their award to the representatives of the parties verbally upon the termination of the last hearing in a case. This is usually done by the umpire, if the umpire was appointed in this case, or by one of the arbitrators. A verbal announcement of the award is done in an arbitrary manner, that is, the arbitrators, should they so desire, may also announce the reasons for the award or the essential part of the reasons or may merely announce a final part of the award; that is, whether the claim has been satisfied or not. This is an important feature of the procedure since the parties, though yet unaware of the reasons for the award, leave the hearings knowing their outcome. A written award indicating reasons must be produced and signed within 15 days after its announcement.

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\* This article is a paper presented at the Second International Congress of Maritime Arbitrators, discussed in the first footnote to the article of Mr. Sergei N. Lebedev, *supra* at 519.

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In accordance with the Rules of Procedure of the Maritime Arbitration Commission the reasons on which the award is based form its integral part. This rule of procedure enables the parties to avoid further wrong actions which can again lead to similar disputes. Publication of the awards, which makes sense only if the awards indicate reasons, presents a possibility to acquaint business circles at large with the awards made by the Maritime Arbitration Commission, and is instrumental in preventing further similar disputes. The awards stating reasons and their publication contribute also to a certain stability in the practice of the Maritime Arbitration Commission—although as a matter of formality the arbitrators in making the award do not have to follow necessarily the award which had been made by some other board of arbitrators in a similar case, *i.e.*, there is no precedent law. The Maritime Arbitration Commission's experience includes a few instances where different awards were made by different boards of arbitrators in two similar cases involving Soviet organizations, and in two or three instances in a series of such cases. However, this is not typical of the Maritime Arbitration Commission and is rather an exception to the rule which is manifested by a great degree of stability in its practice based on making written awards with reasons stated in them, which accounts for the high reputation and prestige of the Maritime Arbitration Commission.

Awards accompanied by reasons increase the responsibility as well as the personal prestige and authority of those who make them and provide a possibility to evaluate the Commission's activities in terms of correctness and validity of its awards. Finally, taking also into account that the party concerned can lodge a complaint with the Supreme Court of the USSR against the awards of the Maritime Arbitration Commission if the existing laws were contravened or wrongly applied by the arbitrators, the arbitrators' duty to make the award with reasons indicated in it secures the parties against possible arbitrary rule or insufficient competence both in the award proper and in setting forth reasons for it.

The technical making of the award is usually assigned to the Secretary who also records the minutes of the sessions and prepares the case for hearing. The Institute of Secretaries at the Maritime Arbitration Commission, comprised of skilled lawyers, throughout the existence of the Maritime Arbitration Commission has always played a very important role in ensuring stability of the practice of the Maritime Arbitration Commission and as an immediate source for its new members.

The foregoing refers to one of the most important parts of the Maritime Arbitration Commission's awards. However, the awards of the Maritime Arbitration Commission consist of four parts. The first part of the award includes the composition of the board of arbitrators, the date of hearing the case, the names of the disputing parties and their representatives which were present at the sessions. To ensure the uniformity of this first formal part there is a special form (blank). The remaining three parts, though each being discriminate, are set forth in an arbitrary manner. The second part contains a detailed account of the factual case with arguments of the parties, expert opinions, if experts were appointed, etc. The third part lists the reasons for the Commission's award and the fourth one is a brief part containing the resolutions. The fourth and the last part of the award is particularly important for the enforcement of the award, for it contains a statement in respect of who should pay, how much, when, and to whom as regards the sum in dispute as well as the interest thereon, the arbitration costs and the compensation for the expenses incurred by the parties. This part is set forth in an arbitrary manner, though traditions of many years have introduced a degree of standardization in it. This last part indicates the date of the award and the number of its originals signed by the arbitrators. Usually the number of the originals of the award is determined by the number of the parties in a case, each party receiving one original of the award plus one more original to be kept in the files of the Maritime Arbitration Commission.

The award shall be sent by registered mail immediately upon its signing, that is, without having to be "redeemed" by the parties. This fast dispatch is achieved owing to the claimant's obligation to make, when filing the points of claim, an advance payment of the arbitration costs in the maximum established amount, *i. e.*, two percent of the sum in dispute. This advance payment covers the expenses of the arbitration proceedings, the arbitrators' fees, the commission's running costs, summoning of witnesses, experts, etc. The same rule also applies to the respondent should the latter file a counterclaim.

In accordance with the established practice the arbitration costs are levied on the party against which the award has been made. Thus, the arbitration costs shall be paid by the respondent, if the claim is fully satisfied, and by the claimant, if the claim is fully declined. If a claim is settled partially, the arbitration costs are usually levied on both parties in proportion to the awarded and declined parts of the claim. Though the maximum amount of the

arbitration costs is fixed by the Rules at two per cent of the sum in dispute, the actual amount of the costs is determined by the Maritime Arbitration Commission in its discretion separately for each case and, should the amount of the arbitration costs so determined be less than two per cent of the sum in dispute, which is not a rare occurrence at all—especially in the cases with large disputed amounts—the balance of the advance payment shall be returned to the payor.

The party in whose favor the award has been made additionally may be awarded expenses incurred in conducting the case, not exceeding, however, five per cent of the sum awarded.

The fixing of the maximum amounts of the arbitration costs and expenses which the parties may incur in proceeding with the case in the Maritime Arbitration Commission enables the parties to determine beforehand the maximum expenses which a party may incur if the most unfavourable award were made. Such a determination is of no small importance when in one way or another a preliminary agreement is given to submit a specific dispute or disputes which may arise to arbitration at the Maritime Arbitration Commission.

Over a period of almost 44 years of the Maritime Arbitration Commission's experience, the Rules of Procedure of the Commission have weathered the time test and have proved fully their value. It is particularly noteworthy that over this period about 2500 awards have been made by the Maritime Arbitration Commission.