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JSC “KAZAN OIL PLANT” V AVES TRADE DMCC [2025] EWHC 2713 (COMM)

The English Court clarifies that challenges to GAFTA and FOSFA appeal awards must be brought within 28 days of the date of the appeal award pursuant to section 70(3) of the Arbitration Act 1996.

OVERVIEW

Stephenson Harwood LLP successfully represented Aves Trade DMCC (“**Aves**”) in the English High Court (the “**Court**”) in the case of *JSC Kazan Oil Plant v Aves Trade DMCC*.¹ Bright J struck out Kazan Oil Plant’s (“**Kazan**”) challenge to a FOSFA appeal award, (a) finding that Kazan’s application was made out of time under section 70(3) of the Arbitration Act 1996 (the “**Act**”), and (b) refusing Kazan’s application for an extension of time. This judgment confirms that parties seeking to challenge arbitral appeal awards (including FOSFA and GAFTA awards) must bring any challenge within 28 days from the date of the appeal award and not the date they receive it. It is the first time the Court has given authoritative guidance on the appeal procedure in two-tier arbitration systems, where bodies like GAFTA and FOSFA have their own internal appeal mechanisms.

BACKGROUND

The dispute arose out of a contract dated 13 August 2020, under which Kazan agreed to sell, and Aves agreed to purchase, 48,000 metric tonnes of crude sunflower oil in eight shipments. The dispute was referred to FOSFA arbitration, which resulted in an award in favour of Aves on 27 March 2024. Kazan appealed to the FOSFA Board of Appeal, and an oral hearing took place in London on 16 and 17 December 2024.

FACTS

1. On 26 March 2025, FOSFA informed the parties by email that the FOSFA Board of Appeal’s award (the “**Appeal Award**”) was available for collection upon payment of the outstanding fees. **Aves’ position was that the 28-day period for challenging the Appeal Award began on the date of the Appeal Award, making the deadline 23 April 2025.**
2. As a Russian entity, Kazan encountered difficulties transferring funds due to sanctions. On 8 April 2025, an intermediary based in the UAE transmitted the required funds on Kazan’s behalf.

¹ JSC “Kazan Oil Plant” v Aves Trade DMCC [2025] EWHC 2713 (Comm)



3. On 10 April 2025, FOSFA sent the Appeal Award to the parties, whereby the parties learned of the result. **Kazan's position was that the 28-day period for challenging the Appeal Award began when the Appeal Award was released, making the deadline 8 May 2025.**
4. Between 10 and 22 April 2025, Kazan changed its Russian legal representatives. Kazan appointed English solicitors on 22 April 2025, who could not act until their engagement letter was signed on 24 April 2025.
5. On 8 May 2025, Kazan applied to the Court for permission to appeal the Appeal Award on points of law pursuant to section 69 of the Act (the "**Permission Application**").

LEGAL ISSUES

The underlying question before the Court was whether Kazan had filed its Permission Application within the required time limit and, if not, whether Kazan had acted reasonably in permitting the 28 days to expire. The parties submitted the following applications:

- a. Aves applied to strike out the Permission Application on the basis that it was made out of time and Kazan had not provided a valid reason for an extension of time (the "**Strike Out Application**"); and
- b. Kazan applied for an extension of time within which to bring the claim (should the Court find that its Permission Application was made out of time) (the "**Time Extension Application**").

THE STRIKE OUT APPLICATION

Whether Kazan could pursue its Permission Application hinged on the interpretation of sections 70(2) and 70(3) of the Act, which provide:

"(2) An application or appeal may not be brought if the applicant or appellant has not first exhausted—

(a) any available arbitral process of appeal or review, and

(b) any available recourse under section 57 (correction of award or additional award).

(3) Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process."

Prior to Bright J's judgment, the application of section 70(3) to GAFTA and FOSFA appeals had not been addressed directly by the Court and relied primarily on two obiter (non-binding) decisions. In *UR Power GmbH v Kuok Oils and Grains Pte Ltd*² ("**UR Power**"), Gross J considered a challenge to a FOSFA appeal and took the view that the phrase "*arbitral process of appeal or review*" did not apply to GAFTA or FOSFA appeal awards.³ In *PEC Ltd v Asia Golden Rice Co Ltd*⁴ ("**PEC**"), Hamblen J suggested that one possible answer was to construe the second half of section 70(3) as only applying in cases where the appeal or review does not culminate in an award.⁵ However Gross J and Hamblen J "*essentially agreed on the fundamental point: any challenge under the Arbitration Act 1996 to an appeal award must run from the date of the appeal award.*"⁶

Bright J found it "*entirely natural that the first limb of section 70(3) sets out the primary or default position in relation to the running of time, by reference to the date of the award*".⁷

² *UR Power GmbH v Kuok Oils and Grains Pte Ltd* [2009] 2 Lloyd's Rep 495

³ See [58]–[59] of *UR Power*.

⁴ *Pec Ltd v Asia Golden Rice Co Ltd* [2013] 1 Lloyd's Rep 82

⁵ See [18] of *PEC*.

⁶ See [19] of the judgment, which refers to *UR Power* at [59] and *PEC* at [18].

⁷ See [20] of the judgment.



The reference in section 70(3) to “any arbitral process of appeal or review” means “the normal 28-day period for the challenge under 67, 68 or 69 is extended, pending the outcome of that arbitral appeal or review. However, where there is or cannot be any arbitral appeal or review of the relevant award, the second limb does not apply.”⁸ Due to FOSFA being a two tier system, the Appeal Award had “no available arbitral process of appeal or review,” and Kazan’s only avenue for challenge was to the Court.⁹ In the light of this, Bright J held that time for any challenges to a FOSFA or GAFTA appeal runs from the date of the appeal award.

THE TIME EXTENSION APPLICATION

Bright J considered whether Kazan could be granted an extension of time applying the factors set out by Colman J in *AOOT Kalmneft v Glencore International AG*, namely:¹⁰

- (i) *the length of the delay;*
- (ii) *whether, in permitting the time limit to expire and the subsequent delay to occur, the party was acting reasonably in all the circumstances;*
- (iii) *whether the respondent to the application or the arbitrator caused or contributed to the delay;*
- (iv) *whether the respondent to the application would by reason of the delay suffer irremediable prejudice in addition to the mere loss of time if the application were permitted to proceed;*
- (v) *whether the arbitration has continued during the period of delay and, if so, what impact on the progress of the arbitration or the costs incurred in respect of the determination of the application by the court might now have;*

- (vi) *the strength of the application;*
- (vii) *whether in the broadest sense it would be unfair to the applicant for him to be denied the opportunity of having the application determined.*

Bright J observed that most of the relevant factors did not apply in this case: neither Aves nor FOSFA contributed to Kazan’s delay in making the Permission Application; Aves would not suffer any particular prejudice if an extension were granted; the arbitration had not continued during the delay; and the merits of the substantive appeal were not decisive.¹¹

Kazan’s delay was neither “enormous” nor “trifling,” making the key issue whether Kazan had acted reasonably in allowing the 28-day period to lapse.¹² The main cause of the delay was Kazan’s difficulty in paying the required FOSFA fee due to sanctions, which Bright J considered “excusable, so far as it goes.”¹³ However, Kazan failed to recognise that only 12 days remained after payment was made, and its late change of Russian legal representation, and delayed instruction of English solicitors, were viewed unfavourably by the Court. Bright J concluded that Kazan’s legal advisers should have been aware of the relevant authorities and the risk of missing the deadline.¹⁴ For these reasons Bright J refused the Time Extension Application.¹⁵

COMMENT

The Court has provided welcome clarity on a point which is of general application to challenges before the courts in respect of FOSFA and GAFTA (or indeed any arbitral) appeal awards. The relevant wording in Section 70(3) of the Act was not changed in the Arbitration Act 2025 and therefore this decision will continue to apply to challenges made under the 2025 Act.

⁸ See [21] of the judgment.

⁹ See [23]–[26] of the judgment.

¹⁰ *AOOT Kalmneft v Glencore International AG* [2002] 1 Lloyd’s Rep 128 at [59]

¹¹ See [32] of the judgment.

¹² See [33] of the judgment citing *Terna Bahrain Holding Company WLL v Al Shamsi* [2012] EWHC 3283 (Comm), at [28].

¹³ See [35] of the judgment.

¹⁴ See [35] of the judgment. The textbooks which Kazan’s English solicitors relied on were *Russell on Arbitration* (4th ed) and *Merkin & Flannery on the Arbitration Act 1996* (6th ed).

¹⁵ See [40]–[41] of the judgment.



Stephenson Harwood LLP, Turkish law firm Esenyel Partners, and Mr Chris Smith KC of Quadrant Chambers represented Aves, the successful defendant. The full judgment can be found [here](#).

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