

Polish Supreme Court judgment
dated 28 January 2011
(Case No. I CSK 231/10)

Summary by arbitraz.laszczuk.pl:

On 29 July 2004 the supervisory board of P. SA appointed Jacek W. president of the management board and authorized the members of the supervisory board to enter into a contract with the new CEO "under the same terms as the previous CEO." On 3 August 2004 a managerial contract was entered into with Jacek W., including salary terms, a non-competition clause, and an arbitration clause calling for arbitration before the Court of Arbitration at the Polish Chamber of Commerce. On 16 August 2004, Jacek W. was dismissed as CEO.

In February 2006 Jacek W. filed a claim with the arbitration court seeking payment under the managerial contract. In March 2006 advocate T.W. was appointed as an arbitrator and filed a statement of impartiality. In May 2008 the arbitration court issued an "award" denying the claim, holding that the parties had not entered into an effective arbitration clause because the members of the supervisory board who entered into the managerial contract with Jacek W. were not specifically authorized to enter into an arbitration clause, which is a separate agreement, but could only agree on the financial terms of the contract with Jacek W. The "award" was issued by a three-member panel of arbitrators (J.N., W.T. and T.W.), but one of the arbitrators (W.T.) filed a dissenting opinion.

Jacek W. (subsequently) learned that advocate T.W. had been appointed to serve as an arbitrator in another case involving P. SA before the Court of Arbitration at the Polish Chamber of Commerce, but in January 2009 T.W. resigned as an arbitrator in that case due to a conflict of interest, stating that his law firm had advised a third party interested in the result of a concentration proceeding involving P. SA that had ended in a decision issued in April 2005, but he could not reveal the grounds more specifically because of attorney-client privilege.

Jacek W. filed a petition with the regional court to set aside the "award." In March 2009 the regional court issued a judgment setting aside the "award," holding that because

arbitrator T.W. failed to reveal the information related to his conflict of interest, Jacek W. had effectively been deprived of the right to defend his interests. The appellate court affirmed in November 2009, holding however that the issue of the validity of the arbitration clause remained open upon reconsideration of the matter.

On cassation appeal, P. SA moved to set aside the rulings below and/or discontinue the proceedings on the grounds that the dispute challenging the arbitration court's ruling that it lacked jurisdiction was non-justiciable. The Supreme Court agreed and discontinued the proceeding.

Excerpts from the text of the court's ruling:

1. An arbitration court may rule on its own jurisdiction in a proceeding in which a claim has been filed (Civil Procedure Code Art. 1180 §1), including also in a separate order. In the regulations concerning procedure before the arbitration court, the Parliament did not provide a basis for issuance of an award dismissing a statement of claim commencing a proceeding before the arbitration court, including in a situation where the arbitration court finds that it has no jurisdiction to decide the dispute. It follows from these provisions that in instances indicated in Civil Procedure Code Art. 1190 §1, 1196 §1 and 1198, the arbitration court shall issue an order discontinuing the proceeding. It should thus be accepted that the arbitration court shall issue such an order also when, after beginning to receive evidence in the matter, it finds that the proceeding cannot continue because of the lack of an arbitration clause or the invalidity of such agreement. Conducting the proceeding and issuing an award then becomes impossible for a reason other than that stated in Civil Procedure Code Art. 1198 (1) and the beginning of (2).

2. The nature of a ruling issued by a court, including by an arbitration court, is decided by the substance of the ruling, and not the name or external form which the court gave to the ruling The ruling challenged by the claimant in the petition to set aside the arbitration award ... was not—contrary to the name used—an arbitration award, but in light of the nature of the determination made therein, an order.

3. An order discontinuing the proceedings before the arbitration court because of the lack of a valid arbitration clause, or an order dismissing the

statement of claim for this reason, is a ruling ending the proceeding before the arbitration court, in which the court rules on its own lack of jurisdiction in the matter. While an order by the arbitration court in which the arbitration court denies a defence of the lack of the arbitration court's jurisdiction may be challenged before the common court by either of the parties within two weeks (Civil Procedure Code Art. 1180 §3), the Parliament did not provide for the opportunity to challenge before the common court an order by the arbitration court in which the arbitration court rules that it lacks jurisdiction in the matter. Upon issuance of such ruling, a proceeding before the common courts is open to the parties interested in resolution of the dispute, and they may exercise their right of access to the courts in such proceeding.

4. A negative determination by the arbitration court as to its own jurisdiction in a matter is a final ruling and is not subject to review by the common court. A ruling by the arbitration court finding that it lacks jurisdiction in the matter may thus not be challenged by a petition to set aside an arbitration award as provided by Civil Procedure Code Art. 1205 ff.