

Case Note

SwemBalt Limited v The Republic of Latvia

Year of the award: 2000

Forum: Court of Arbitration, Copenhagen, Denmark

Applicable investment treaty: Latvia-Sweden BIT

Arbitrators Dr Allan Philip, Chairman Kaj Hober Gustaf Moller	Timeline of the dispute 24 March 1999 – notice of arbitration 21 October 1999 – tribunal constituted 23 October 2000 – arbitral award
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A. Factual Background and Claims of the Investor

SwemBalt claimed compensation for the loss of the vessel “SJFW/SwedeBalt” moored in the port of Riga. The ship was to be used as a Swedish trade centre and floating chamber of commerce. On 21 April 1993, the ship was towed to Riga shipyard to undergo renovations, and negotiation commenced with interested parties for the rental of accommodation and office space in the ship. In the meantime, the Port Authority of Riga allowed mooring the ship in Riga port, and the district mayor granted permission for the lease of the berth and land. In November 1993 the ship was towed to this position. SwemBalt established a Latvian subsidiary SwedeBalt SIA, which signed a lease for the land with the district mayor, to be in force from 1 December 1993 to 30 June 1998.

On 28 March 1994, the ship was forcibly moved by the Port Authority, without permission of its owners, to a new berth two miles from the agreed location and moored 30m from shore. SwemBalt was prohibited from carrying out any further business on the ship. The Mayor of Riga informed SwemBalt that a new law had been adopted and applied retrospectively that invalidated the land lease, and that SwemBalt was now in breach of various local laws and was denied access to the ship. Official correspondence between the Swedish Embassy and the Latvian authorities did not resolve the situation. The Latvian Maritime Authorities then decided that the ship was a danger to navigation owing to its position, and on 3 May 1996 a public auction was advertised, and the ship was described as a wreck. The ship was auctioned in July 1996 for US\$ 150,000, the value of its scrap metal.

SwemBalt submitted an application for arbitration under the BIT between Latvia and Sweden, claiming that Latvia breached Article 2 (Promotion and Protection of

Investments) and Article 4 (Expropriation and Compensation) of the BIT. SwemBalt claimed compensation for:

- loss of the vessel: US\$2,250,000
- loss of equipment and furnishings: US\$ 156,258
- loss of income from March 1994 until June 1998: US\$ 400,000
- interest on all sums: 10% per year from the date the loss was incurred
- all expenses and costs.

The Republic of Latvia did not respond to the original notice of arbitration, and did not attend the oral hearings. A late submission was presented by the Republic denying all claims.

B. Findings on Merits

The Tribunal ruled that the law applicable was the BIT and general international law. The Tribunal found that the Republic, by removing the ship, by preventing SwemBalt from using the ship, and by auctioning the ship without paying compensation, violated its obligations under the BIT and under general international law (the Tribunal did not specify which treaty obligation had been breached). (para.38)

C. Findings on Damages

The Tribunal noted that the BIT itself did not include compensation provisions, but ruled that a right to compensation could be drawn indirectly from the provision in Article 4(1)(c), which required “prompt, adequate and effective” compensation in cases of expropriation. The Tribunal added that the right to compensation existed in “general principles of international law as supplemented by general principles of law recognised by civilised nations”. (para.38)

The Tribunal held that SwemBalt’s US\$2,250,000 claim for compensation for the **loss of the ship** was justified. This amount was based on the market value of the ship evidenced from a January 1996 agreement of sale of the ship that was later cancelled because the Latvian authorities would not release the ship. (paras. 39-40)

The Tribunal held that the claim for loss of **furnishings and equipment** for US\$ 156,258 was justified, since the Claimant evidenced the existence of these items on the ship and the Respondent gave no evidence to refute this claim. (para.41)

The claim for **loss of income** of US\$ 400,000 for the period March 1994 to June 1998 was rejected in part, as the Tribunal ruled that the Claimants had not submitted specific evidence, in particular the Claimant did not present any lease agreements for space aboard the ship. Thus, although the Tribunal recognised that SwemBalt would have received net income, it limited its award on that claim to US\$ 100,000 (in a discretionary manner). (paras.42-43)

The Tribunal found that the BIT did not grant a right to **interest**. The Tribunal referred to Article 4(1)(c) of the BIT (provision on expropriation) and held, by

analogy, that interest shall be paid to provide adequate compensation. The Tribunal observed that there are no rules regarding the rate of interest in international law, so it looked to national law. The national law available to the Tribunal was Latvian law where the act was committed, Swedish law where the Claimant was based, or Danish law where the arbitration was held. As the link with Sweden was “not sufficiently strong” and there was not enough information regarding Latvian law, the Tribunal applied Danish law to determine the rate of interest.

Under Danish law, the applicable **rate of interest** was the official discount rate plus six percent, payable from the date proceedings were initiated. The Tribunal held that the claim of 10% interest per annum was a reasonable rate, but denied the claim of payment of interest from date of the loss and awarded interest payable from 9 April 1999, the date on when Latvia was informed of the proceedings, up to payment of the sum in full.

Finally, the Tribunal awarded SwemBalt US\$ 1,345 and SEK 1,406,250 to cover all **arbitration costs** and solicitors’ fees and duties, including VAT on the latter.

Implications / Initial Analysis

- **Transaction method** was used as a basis to determine the market value of the property.
- Lost profits can be recovered when there is **specific evidence** proving that profit were realizable.
- **Discretion** applied when awarding loss of profits.
- International law has no rules on the **rate of interest**.
- **National law** (of the seat of arbitration) was applied to determine the applicable **rate of interest**.