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Introduction

The arbitrator's remuneration are sums due to him in respect of his fees and expenses. Such remuneration is also known as the costs of the award which must be distinguished from the costs of the reference, ie, legal costs incurred by the parties. [1]

The arbitrator's expenses

The expenses of the arbitrator or umpire will include the reasonable disbursements of the arbitral tribunal with regard to the recording of evidence and the hiring of a suitable venue. Where the arbitrator is empowered to employ a person, eg, an expert, legal advisor or assessor to assist with the reference, the expenses paid to such person will be allowed as costs of the reference. [2]

The court in Appleton v Norwich Union Fire Insurance Society Ltd [3] allowed an umpire's fees to be included in a joint award. If the umpire participates prematurely in the proceedings before being entitled, he cannot claim any remuneration. The fees of a legal assessor sitting with the arbitrator without the consent of the parties will be disallowed. [4]

Fixing remuneration

The arbitrator's fees is an important consideration when parties are contemplating arbitrating a dispute. The parties may make an agreement on the remuneration of the arbitrator or umpire with him expressly in advance. In most cases, the amount to be paid to the arbitrators, or at least the machinery in establishing the amount are usually pre-agreed or settled at the first preliminary meeting between the parties and the arbitrators.

The arbitrator's entitlement in contract

An arbitrator's entitlement to payment of his fees and expenses is normally a matter of contractual arrangement between the arbitrator and the parties. In practice, arbitrators invariably send out proposed terms and conditions to the parties at the outset. The terms are then either accepted or negotiated at an early stage. If agreement cannot be reached, it is necessary for the parties to make another appointment.

Types of remuneration agreements

In general, the agreement as to amount can be of four types:

(1) A fixed fee to be agreed upon. This is not normally used for arbitrations with complex issues where it may be difficult to ascertain at the outset the amount of time the arbitration may take. It is used in small arbitrations where a fixed fee is agreed upon on the basis that the arbitration will be resolved within a fixed time. If the agreed fee is fixed and the arbitrator underestimated the time the arbitration actually takes, he is bound and could not subsequently insist on a new fixed fee. [5]

(2) The most common type – a fee based on an hourly or daily rate, as provided in, eg, the Pertubuhan Akitek Malaysia Arbitration Handbook. [6] For arbitrations not conducted under the Rules imposing an hourly or daily rate, the norm is to agree on brief fees plus daily refresher, both of which would vary according to the subject matter, complexity, quantum claimed and period of arbitration. The brief fees is the minimum fee to be paid to the arbitrator, eg, if the parties settle the case at a very early stage after appointment of an arbitrator.

(3) A fee based on a proportion of the amount in dispute, eg, as provided in the Institution of Engineers Rules for Arbitration [7] and the Malaysian Institute of Arbitrators Arbitration Rules. [8] In addition, the two Rules also provide for a daily rate.

(4) A fee to be determined by an arbitral institution. An example of such fee arrangement arises if the arbitration is administered by the Regional Centre for Arbitration Kuala Lumpur (KLRCA) or where the arbitrator is appointed by the KLRCA, the Rules of the Centre sets the maximum and minimum fees that an arbitrator should charge. The rate of fees of the arbitrator is then settled by the KLRCA with the parties prior to or at the time of making the appointment.

Entitlement to reasonable remuneration

The arbitrator will be entitled to be paid the agreed amount if he completes the reference and makes a valid award. Where there is an express agreement by the parties that they will pay the arbitrator or umpire, the arbitrator or umpire can maintain an action to recover the remuneration. [9] If they do not agree on the remuneration in advance, the arbitrator or umpire is ordinarily entitled to reasonable remuneration.

What is reasonable remuneration is a question of fact to be determined in the light of all the circumstances of each case. Where the arbitrator is a professional or ex-judge, the reasonableness of the remuneration might be determined by considerations such as the amount that persons of that standing would ordinarily charge for the services rendered.

Where the arbitrator is a member of a trade association which employs a prescribed scale of fees for arbitrations held under its auspices, a term is probably implied that the scale of fees applies. However, it has been contended that this may lead to an unsatisfactory result as an arbitrator may be paid less for a long and difficult hearing than for one which is straightforward but involves a larger sum. [10]

Factors to be considered
Mustill and Boyd Commercial Arbitration [11] have listed the factors to be considered as follows:

(1) the complexity of the dispute and the difficulty or novelty of the questions involved;
(2) the skill, specialized knowledge and responsibility required of the arbitrator;
(3) the number and importance of the documents studied;
(4) the place and circumstances in which the reference takes place;
(5) the importance of the dispute to the parties; and
(6) the value of the property involved, or the amount of the sum in issue.

The court in SN Kurkjian (Commodity Brokers) Ltd v Marketing Exchange for Africa Ltd (No 2), [12] discussed the relevant criteria in the assessment of a reasonable fee. [13]

Parties' liability for arbitrator's fees and expenses
The parties are jointly liable for the arbitrator's fees and expenses. [14] It has been suggested that the liability is not only joint, but joint and several. [15] This liability, whether only joint or joint and several (in the absence of any express or implied agreement to the contrary) is for the fees and expenses of the entire tribunal and is not limited to the arbitrator appointed by the party sought to be held liable.

It is normal for the parties to agree on terms with the arbitrator, whereby the parties pay his fees and expenses on an interim basis in equal shares. In due course, the successful party is usually awarded its costs of the arbitration and thereby recovers the share of the arbitrator's fees and expenses that it has paid. If, however, one party fails to pay the arbitrator's fees and expenses, whether or not on an interim basis, eg, because of insolvency, the arbitrator is entitled to recover all his fees and expenses from the other party. Therefore, an arbitrator does not waive his right to claim reasonable remuneration against both parties jointly by directing in an award that the costs of the arbitration be paid by one party. [16] Where an award has been set aside after a party has paid the costs of the award, one half of such costs so paid may be recovered from the other party. [17]

Stakeholder
A third party, for example, PAM, IEM or KLRCA, holding security deposits out of which the arbitrator is remunerated, is a mere stakeholder against whom no direct action lies by the arbitrator. However, a stakeholder may be liable depending on the construction of the agreement of appointment.

Interim payments
Payment is only due when the work is completed, and that is when an award is made by the arbitrator. To overcome this, it is normal for arbitrators to stipulate interim payments particularly when an arbitration is likely to go over an extended period. If an arbitrator has not agreed on interim payment with the parties, he may nevertheless be able to charge on an interim basis based on an implied term allowing him to do so.

In Turner v Stevenage Borough Council,[18] per Staugton J (with whose judgment Mummery LJ agreed), it was stated that:

> The arbitrator expected the arbitration to be conducted in three months or so. Instead of that, he was involved in a long series of preliminary meetings. Was he expected to work for no present reward for as long as the parties required him to do so? Was it necessary for him to incur expense for so long as they please, provided only that at the end of the day when he eventually made an award he would then have a right to reimbursement? That does not seem to me to be good law or good sense. In my judgment, on the true construction of this contract and in the light of the surrounding circumstances which prevailed when it was made – or, as some people like to say, the factual matrix – it was an implied term that the arbitrator might request an interim payment towards his fees and expenses provided that that was done at a reasonable time, either once or oftener, and provided also that it was not made after the parties were so committed to his services at a hearing that they would be in an inferior bargaining position to refuse. Subject only to that, I would say that the arbitrator is entitled to make a reasonable demand for interim payment and to enforce it with the sanction of resignation. (cf the views of Pill J).

Taxation of remuneration by the arbitrator

If the reference is completed and a valid award is made, then in the absence of a contrary intention in the arbitration agreement, the arbitrator or umpire may himself assess the amount of his remuneration, and tax it in his award. Under s 19(1) of the Arbitration Act 1952, the arbitrator can tax or settle his remuneration as part of 'the costs of the reference and award'.[19] It is not clear what the arbitrator's or umpire's entitlement to remuneration is where the reference does not proceed to an award, either as a result of the parties' actions or as a result of the arbitrator's or umpire's, or where the award is for some reason invalid.

On publication of the award, the arbitrator is entitled to take action on express or implied agreement for his fees and expenses. [20] An umpire can also take similar action provided that his entry upon the reference is proper. Also, a member of the arbitral tribunal may be able to bring an action independently, without reference to the other members of the tribunal, to claim his fees and expenses.

Lien on award

An arbitrator or umpire has a lien over the award for his costs, entitling him to retain the award and to release it only on payment of his costs under s 20(1) of the Arbitration Act 1952 (Act 93). [21] This is a power which is routinely exercised and is an effective means of ensuring prompt and proper payment of the arbitrators fees and expenses. [22]

The ordinary practice is for him to notify the parties of the amount he is charging as soon as the award is ready, and to retain possession of the award until the charges have been paid. In most cases in which an arbitrator taxes and settles his own fees, he will exercise a lien upon the award to compel payment. In such cases, there is sometimes an effective appeal under s 20 of the Arbitration Act 1952. This right is rendered ineffective where the application of the dissatisfied party is forestalled by the other party taking up and paying for the award. But following Government of Ceylon v Chandris, [23] many awards of costs have been unspecific and have not stated the amount of the arbitrators' remuneration, thus enabling either party to apply for a taxation under s 19(2) of the Arbitration Act 1952, but have been accompanied by an intimation that the parties could take up the

award on payment to the arbitrators of a specified sum. This preserved the lien, and if neither party would take up the award on those terms, s 19 could be invoked.

But in Rolimpex Centrala Handlu Zagranicznego v Haji E Dossa & Sons Ltd, [24] the arbitral tribunal took advantage of a rule which required the party seeking a special case to pay a large deposit by way of security for the costs of the award. Previously, this could be treated as a refusal to state a case and the provisions of s 22 of the Arbitration Act 1952 could be relied on, but the real problem was created by the fact that by reason of the exercise of the power, no lien was exercised on the award, and the party at risk as to costs was deprived of the opportunity to challenge the reasonableness of the charges in a taxation under s 19. If, as in Rolimpex Centrala Handlu Zagranicznego v Haji E Dossa & Sons Ltd, the charges had been settled and taxed in the award, then the party at risk was also deprived of the opportunity to challenge their reasonableness under s 19 of the Arbitration Act 1952. The problem was resolved as follows: there being a motion to set the award aside, it was adjourned by consent in order that all parties might apply to the court for a taxation by consent under s 19(2). An alternative approach would have been to remit the award by consent to enable the tribunal to delete the reference to taxation and settlement.

Consequently, the party who takes up the award will pay the arbitrator's fees and expenses. In practice, the parties may share the costs and take up the award together. Otherwise, if the winning party has taken up the award, he can seek to recover it from the losing party in accordance with the award itself. The losing party may take up the award where he believes that he has grounds to challenge the award. When neither party takes up the award, the lien is valueless. In such a situation, the arbitrator has to enforce directly by action based on the agreement between the parties and himself the amount of fees and the manner in which they are to be paid. In the absence of an agreement, the arbitrators are entitled to be paid reasonable remuneration either on an implied term or quantum meruit. The lien extends to the award itself and to expert opinions obtained by the arbitrator. It does not, however, extend to documents submitted to the arbitrator in the course of the reference. The parties can recover such documents from the arbitrator. [25]

Taxation of remuneration by High Court

If the remuneration of an arbitrator or umpire has not been agreed upon in advance and has not been taxed in the award, but simply demanded and the lien not exercised, then the party liable can cause a taxation by the High Court under s 19(2) of the Arbitration Act 1952 (Act 93).

However, if the arbitrator released his award with demanding prepayment, the court has no jurisdiction to hear an application to tax the arbitrator's costs. [26] A winning party who had paid the arbitrator's fees and taken up the award can demand from the losing party the fees paid to the arbitrator. The losing party has no right to seek a taxation of the arbitrator's costs. [27]

If the arbitrator or umpire exercises his lien and refuses to deliver his award except on payment of fees demanded by him, the High Court may under s 20(1) of the Arbitration Act 1952, on an application for the purpose, order the arbitrator or umpire to deliver the award to the applicant on payment into court by him of the fees demanded, and further order that the fees demanded be taxed by the taxing officer and that out of the money paid into court there be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation, and that the balance of the money, if any, be paid out to the applicant.

Any party to the reference may make the application by originating summons to a judge in chambers or a registrar, [28] unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire. [29] The aggrieved party should afford the arbitrator or umpire an opportunity to set out the basis upon which the fees and expenses are calculated. If such an opportunity has been afforded and not taken, the inference might arise that the arbitrator or umpire has not applied his mind properly to the calculation. [30]

A taxation under this provision is subject to review in the same manner as a taxation of costs under s 20(3) Arbitration Act 1952. The arbitrator or umpire is entitled to appear and be heard on any such taxation or review. [31]

Except under the above provisions there is no means of taxing or otherwise disputing the amount of fees fixed by the arbitrator or umpire, for example, if the arbitrator or umpire taxes the fees in the award and does not exercise the lien, or if the party who takes up the award is not the party who complains of the excess. [32]

If the amount is highly unreasonable, the court would hold the arbitrator or umpire guilty of misconduct and so set aside or remit the award. [33] Even if no misconduct is proved, the court in the exercise of its discretion can order taxation of the arbitrator's (or umpire's) fees and expenses fixed by the award, simply on the basis that the amount demanded is more than the court considers appropriate.

Security for arbitrator's fees

In appropriate circumstances, arbitrators may ask for security for their fees. There is no provision under the Arbitration Act 1952 concerning security for arbitrators' fees. Such a provision is a matter of contract between an arbitrator and the parties. A term may be agreed upon which requires money to be paid to an arbitrator or placed in a designated account before the time at which the arbitrator earns his fees. The arbitrator may then be paid from the secured funds. The benefit to the parties is that the fees are readily available when the awards are published and, so long as the monies held on account are sufficient and do not need topping up, no delay will occur in the payment of fees to obtain the award. The Pertubuhan Akitek Malaysia Arbitration Handbook [34] permits arbitrators to require security for their fees from any party. [35]

Commitment fees

Arbitrators may also ask for the payment in advance of a non-refundable 'commitment fee', to protect themselves against the possibility of the arbitration not taking place. A commitment fee is a fee payable to an arbitrator in any event, even if the arbitration does not take place. It constitutes compensation for time lost. [36] The purpose of such a fee, when properly imposed, is to provide recompense for an arbitrator who has set aside a period for a hearing and is unable to obtain equally remunerative work during that time. The proper time for the arbitrator wishing to insist on payment of a commitment fee is before appointment. After appointment, it is too late to insist on a commitment fee, since the imposition of a commitment fee at that stage would constitute a variation of the arbitration agreement, which would require the consent of the parties.

The parties in K/S Norjal A/S v Hyundai Heavy Industries Co Ltd [37] appointed arbitrators and asked them to reserve a 12-week period two years in the future for the hearing. The arbitrators accepted the appointment but stipulated that they should receive a proportion of their costs in advance as a 'commitment fee'. One of the parties refused to contribute to such a fee, and applied to the court for removal of the arbitrators for their misconduct in asking for it. The other party cross-applied for a declaration that it could pay the entire commitment fee itself without giving rise to any imputation of bias against the arbitrators. At first instance, the court dismissed both applications because it had not been improper for the arbitrators to ask for the commitment fee in the circumstances of the case, but it would not have been appropriate for the fee to have been paid by one party alone. In order to avoid similar problems, the court stressed that all fee negotiation should take place before appointment and that arbitrators should only accept an appointment if it was absolutely clear that all the parties were aware of and agreed the basis of remuneration. The Court of Appeal dismissed both parties' appeals, holding first that an arbitrator is entitled to negotiate before appointment a commencement fee, but not to insist upon such a fee after he has been appointed, and secondly that an arbitrator acts properly if he declines to agree a fee with one party to which the other objects.

Fees for early settlement

Arbitrators may also ask for fees payable on early settlement. Fees payable on early settlement are dependent on the agreement between the parties and arbitrator. Such agreements may range from fees calculated on time actually spent by the arbitrator to irrecoverable lump sum fees paid in advance. In the latter case, where the arbitrator has put in some work, such sums are irrecoverable from the arbitrator because of the application of the principle that nothing else than a total failure of consideration permits restitution. [38] If such fees are not paid in advance, there is a dichotomy in the law. The arbitrator can only claim if there is substantial performance on his part. [39]

No award arising from the arbitrator's own conduct

An arbitrator's own conduct may result in no award being made by him. This may happen when the court removes the arbitrator or where the arbitrator has resigned. The Arbitration Act 1952 makes no provision for the early termination of the arbitrator's contract, although s 14(3) states that an arbitrator removed for failing to proceed with reasonable despatch will not be entitled to receive any remuneration for his services. [40]

Reasonable fees in the absence of fault

In the absence of fault, an arbitrator or umpire is entitled to reasonable fees and expenses based on the construction of the express and/or implied terms of reference to arbitration. Even where there is no jurisdiction, an arbitrator may still be entitled to look to the persons who purportedly appointed him for reasonable remuneration.

Examples of the reference to arbitration terminating through no fault of the arbitrator, inter alia, is where:

(1) the point is taken that the arbitrator has no jurisdiction, and this is upheld by the court. As there cannot be a valid award from a lack of jurisdiction, it follows that the arbitrator cannot tax and settle his fees and expenses by an award. He is not entitled to recover his fees. [41]
(2) there is a settlement of the dispute;
(3) a court makes an order terminating the arbitration proceedings;
(4) a court grants an injunction against the arbitration proceedings;
(5) the arbitrator is removed on the ground that without any fault it is found that the appointment is unsuitable; and
(6) the agreement relied on by the parties does not constitute a written agreement within the definition of s 2 of the Arbitration Act 1952.

No remuneration if there is actual misconduct

An arbitrator or umpire will not be entitled to remuneration if the arbitration terminates due to his actual misconduct. Examples of actual misconduct would include the acceptance of a bribe, lack of impartiality, bias, corruption, having an undisclosed interest in the subject matter of the dispute, being employed by one of the parties to the reference and acting unconscionably with regard to fees, resulting in the entire award being set aside. [42] The court may require the arbitrator to refund fees already paid where the award is set aside because of actual misconduct. [43]

Reasonable fees where arbitrator acts bona fide

An arbitrator or umpire is entitled to remuneration where he acts bona fide, even if his incorrect decision leads to the nullity of the award. The arbitrator is entitled to be paid his remuneration unless there is proof of misconduct against him. The possibility of error is inherent in the judicial process. Differently constituted tribunals may arrive at different conclusions in respect of the same dispute on an identical set of facts. In Port Sudan Cotton Co v Govindasamy Chettiar & Sons, [44] the court explained, per Donaldson J:

> There is a distinction between error and misconduct. To err in fact or law is not only human but an occupational hazard. Unless it is so often repeated as to give rise to some suggestion of incompetence it happily involves absolutely no reflection upon the person concerned, whether judge, umpire or arbitrator.

Umpire can decide on arbitrators' remuneration

Where the reference is to two arbitrators and an umpire, and the arbitrators fail to agree, so that the duty of making the award revolves on the umpire, the umpire may include the fees of the arbitrators with his own charges as part of the costs of the award. [45] If he does

so, he should distinguish between his own charges and the arbitrators' remuneration, [46] where the umpire had included his own and the arbitrators' remuneration in the award without specifying how much was in respect of his own charges and how much in respect of those of the arbitrators, the court remitted the award with a direction that he should state those amounts.

Factors to consider when assessing own fees

Umpires and arbitrators assessing their own fees, and umpires assessing arbitrators' fees, must take into account the interests of those who will have to pay them. This assessment involves the application of an independent mind and judgment, and it is desirable that the basis on which the fee is calculated should be stated. In Government of Ceylon v Chandris, [47] the court in considering the umpire's power to tax and settle the arbitrator's fee stated, per Megaw J:

> Both 'tax' and 'settle' involve the application by the umpire of his own independent mind and judgment to the fees demanded and the work done in order to be satisfied that the fees are fair and reasonable, bearing in mind the interests of the parties who will have to pay them, as well as the legitimate interests of the arbitrators.

In relation to the determination of the arbitrator's costs, the court in Rolimpex Centrala Handlu Zagranicznego v Haji E Dossa & Sons Ltd [48] per Donaldson J, observed that:

> [It] must be exercised with independence and a proper regard for the interests not only of those who will receive the costs, but also of those who will have to pay them. The exercise of this power in relation to the tribunal's own remuneration is obviously as difficult as it is invidious, at least if there are no scale fees applicable.

Where the umpire fixes the charges of advocate-umpires, he should distinguish between the part of their fees attributable to their role as arbitrators and the part attributable to their role as advocates. It is not proper for an umpire to include the costs of an arbitrator in an award. [49] Legal or other expert assistance may be sought in determining a fair amount of costs. [50]

Remuneration if not included in the award

If the arbitrator or umpire does not include his remuneration in the award, the party liable to pay his charges may, as between himself and the other party to the reference, have the charges taxed. [51] Where the charges fixed by the arbitrator or umpire include a sum paid by him to his solicitors for preparing his award, the party liable to pay those charges is entitled to tax the solicitor's bill. [52]

Recovery of excessive remuneration

If the arbitrator or umpire fixes his remuneration at an unreasonable and excessive amount, a party who has paid such amount in order to take up the award can bring an action to recover the sum by which such charges exceed what is fair and reasonable unless the amount is included in the award itself, in which case his only remedy is to move to set aside the award or so much of it as relates to the arbitrator's remuneration. [53]

The court will not intervene unless the fees are extravagant or the arbitrator or umpire has seriously misunderstood his duty with regard to the assessment of his fees. Such misunderstanding may be inferred, in the absence of adequate information, where the fees appear to be out of proportion to the work involved. [54] It is also possible to allege that the arbitrator has been guilty of misconduct by failing to act judicially. [55]

Application of this principle is a question of fact, relevant matters include the status of the arbitrators, as in Appleton v Norwich Union Fire Insurance Society Ltd, [56] per Salter J, where it was held that it was justifiable for a King's Counsel acting as umpire to receive a larger fee than the other two arbitrators, a junior counsel and surveyor. In Kurkjian (Community Brokers) Ltd v Marketing Exchange for Africa Ltd, [57] it was held that the size of the amount at stake was immaterial if the work involved is complex.

Conclusion

The law relating to arbitrator's remuneration is concerned with two matters and treats them separately. The first matter is the obligation of the parties to meet the fees and expenses charged by the arbitrators, including those of any arbitrator who has ceased to act, and of any umpire whether or not he has been called upon to participate in the award. The second matter is the allocation as between the parties, by the arbitrator's award, of the arbitrator's fees and expenses, which form part of the recoverable costs of the arbitration. In practice, if the arbitrator's fees and expenses have been agreed in advance, the full amount is recoverable under the award. While if there has been no agreement as the arbitrator's fees and expenses, the arbitrator is entitled to a reasonable amount as decided upon by the court.

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1 Section 19(1) of the Arbitration Act 1952 (Act 93).
2 Hawkins v Rigby (1860) 8 CBNS 271, 141 ER 1169.
3 (1922) 13 LI L Rep 345.
4 Re an arbitration between Westwood, Baillie & Co and the Government of the Cape of Good Hope (1886) 2 TLR 667.
5 Town Centre Securities plc v Leeds City Council [1992] ADRLJ 54.
6 1994 Edition.
7 3rd Edition, 1994.
8 2000 Edition.
9 Hoggins v Gordon (1842) 3 QB 466.
10 See Mustill and Boyd Commercial Arbitration (2nd Ed, 1989) at p 236.
11 (2nd Ed, 1989) at p 237.
12 [1986] 2 Lloyd's Rep 618.
13 See also Crampton and Holt v Ridley & Co (1887) 20 QBD 48; Willis v Wakeley Bros (1891) 7 TLR 604; Brown v Llandovery Terra Cotta Co Ltd (1909) 25 TLR 625.
14 Brown v Llandovery Terra Cotta Co Ltd (1909) 25 TLR 625, following Crampton and Holt v Ridley & Co(1887) 20 QBD 48 at 54; Swift v South Melbourne Permanent Society and Deposit Institute (1896) 2 ALT 156.
15 Mustill and Boyd Commercial Arbitration (2nd Ed, 1989) p 235 note 13.
16 Re an Arbitration between Lyders and Fyfe & Cuming (1909) 28 NZLR 1000.
17 Lyders v Residential College Committee(1911) 30 NZLR 72.
18 [1998] Ch 28 at 36, [1997] 3 WLR 309 at 316, CA (Eng).
19 See also Re Prebble and Robinson [1892] 2 QB 602; Re Stephens, Smith & Co and Liverpool and London and Globe Insurance (1892) 36 Sol Jo 464.

20 Roberts v Eberhardt (1857) 3 CBNS 482; Re Coombs and Freshfield and Fernley(1850) 4 Exch 839; Hoggins v Gordon (1842) 3 QB 466.

21 See also R v South Devon Rly Co(1850) 15 QB 1043; Government of Ceylon v Chandris [1963] 2 All ER 1.

22 R v South Devon Rly Co (1850) 15 QB 1043; Re Coombs and Freshfield and Fernley(1850) 4 Exch 839; Government of Ceylon v Chandris [1963] 2 All ER 1.

23 [1963] 2 All ER 1.

24 [1971] 1 Lloyd's Rep 380.

25 Ponsford v Swaine (1861) 1 John & H 433.

26 Section 20(1) of the Arbitration Act 1952.

27 Rolimpex Centrala Handlu Zagranicznego v Haji E Dossa & Sons Ltd [1971] 1 Lloyd's Rep 380 at p 384 per Donaldson J; SN Kurkjian (Commodity Brokers) Ltd v Marketing Exchange for Africa Ltd (No 2) [1986] 2 Lloyd's Rep 618.

28 Order 69 r 3 of the Rules of the High Court 1980.

29 Section 20(2) of the Arbitration Act 1952.

30 Government of Ceylon v Chandris [1963] 2 All ER 1.

31 See s 20(4) of the Arbitration Act 1952.

32 See Rolimpex Centrala Handlu Zagranicznego v Haji E Dossa & Sons Ltd [1971] 1 Lloyd's Rep 380; Re Stephens, Smith & Co and Liverpool and London and Globe Insurance Co (1892) 36 Sol Jo 464.

33 Re Prebble and Robinson [1892] 2 QB 602 at p 604; Appleton v Norwich Union Fire Insurance Society Ltd (1922) 13 Ll L Rep 345; Government of Ceylon v Chandris [1963] 2 All ER 1; SN Kurkjian (CommodityBrokers) Ltd v Marketing Exchange for Africa Ltd (No 2) [1986] 2 Lloyd's Rep 618.

34 1994 Edition.

35 See rule 5(v).

36 K/S Norjal A/S v Hyundai Heavy Industries Co Ltd [1991] 3 All ER 211, [1991] 1 Lloyd's Rep 524, CA (Eng).

37 [1991] 3 All ER 211, [1991] 1 Lloyd's Rep 524, CA (Eng).

38 Whincup v Hughes (1871) LR 6 CP 78.

39 Cutter v Powell (1795) 6 TR 320.

40 Penang Development Corp v Trikkon Construction Sdn Bhd [1997] 3 MLJ 115.

41 Burkett Sharp & Co v Eastcheap Dried Fruit Co and Perera [1961] 2 Lloyd's Rep 80, affd [1962] 1 Lloyd's Rep 267, CA (Eng); Mustill and Boyd Commercial Arbitration (2nd Ed, 1989) at p 244.

42 See Weise v Wardle (1874) LR 19 Eq 171; Lendon v Keen [1916] 1 KB 994; Mustill and Boyd Commercial Arbitration (2nd Ed, 1989) at p 232. See also Tiki Village International Ltd v Riverfield Tiki Holdings [1994] 2 Qd R 674; Sinclair & L Sinclair Pty Ltd v Bayly & Earle (1995) 6 BCL 439 (There is actual misconduct where the arbitrator acts dishonestly, unfairly, knowingly exceeds his jurisdiction, conducts the reference or decides the matter in a manner which, objectively tested against, eg, the nature of the dispute, the submissions made by the contending parties, his qualifications (including the qualifications expected of him), he should not have done so).

43 Traynor v Panan Constructions Pty Ltd (1988) 7 ACLR 47.

44 [1977] 1 Lloyd's Rep 166 at p 178.

45 Ellison v Ackroyd (1850) 1 LM & P 806. See also Threlfall v Fanshawe (1850) 1 LM&P 340 (where the reference was under a court order); and Appleton v Norwich Union Fire Insurance Society Ltd (1922) 13 Ll L Rep 345.

46 See Re Gilbert and Wright (1904) 68 JP 143.

47 [1963] 2 All ER 1 at p 6.

48 [1971] 1 Lloyd's Rep 380 at p 384.

49 Government of Ceylon v Chandris.

50 Rowcliffe v Devon & Somerset Rly Co (1873) 21 WR 433.

51 Re Prebble and Robinson [1892] 2 QB 602; Re James & Sons [1903] WN 99, where the umpire had fixed a scale fee depending on the amount of the award and this was disallowed on taxation, despite the party's preparedness to pay on that basis. See also Roberts v Eberhardt (1857) 3 CBNS 482 at 508.

52 Re Collyer-Bristow & Co[1901] 2 KB 839, CA (Eng); cf Galloway v Keyworth (1854) 15 CB 228; Kuala Ibai Development Sdn Bhd v Kumpulan Perunding (1988) Sdn Bhd [1999] 5 MLJ 137, where the arbitrator was not allowed to add his solicitor's bill to his own fees.

53 Llandrindod Wells Water Co v Hawksley (1904) 68 JP 242, CA (Eng); Fernley v Branson (1851) 20 LJQB 178 (the action was specified as being in money had and received); Barnes v Braithwaite and Nixon (1857) 2 H & N 569; Barnes v Hayward (1857) 1 H & N 742 at 743; Re Coombs and Freshfield and Fernley (1850) 4 Exch 839 at 841; and cf Dossett v Gingell (1841) 2 Man & G 870. As for the factors relevant in assessing what amount is reasonable see SN Kurkjian (CommodityBrokers) Ltd v Marketing Exchange for Africa Ltd (No 2) [1986] 2 Lloyd's Rep 618.

54 Government of Ceylon v Chandris[1963] 2 QB 327, [1963] 2 All ER 1, [1963] 1 Lloyd's Rep 214 at 227 per Megaw J.

55 Re Stephens, Smith & Co and Liverpool and London and Globe Insurance (1892) 36 SJ 464; Re Prebble and Robinson [1892] 2 QB 602; Appleton v Norwich Union Fire Insurance Society Ltd (1922) 13 LJ LR 345; Government of Ceylon v Chandris (above); Kurkjian (Community Brokers) Ltd v Marketing Exchange for Africa Ltd [1986] 2 Lloyd's Rep 618.

56 (1922) 13 LJ LR 345.

57 [1986] 2 Lloyd's Rep 618.