

CREWFORD PTY LTD V TRANSIT AUSTRALIA PTY LTD (1999) APPEAL 5600 OF 1998

Court of Appeal of Queensland – 23 March 1999

FACTS

Transit and Crewford were involved in an arbitration for the determination of what compensation should be paid to Crewford for loss of bus services. The arbitrator awarded costs to Crewford. Transit appealed to the Court on the costs order.

The Commercial Arbitration Act 1990 in section 38(3) provided that leave to appeal an arbitration decision would only be granted if the appeal would substantially affect the rights of the parties and there was an obvious error of law in the decision or there was strong evidence that the arbitrator made an error of law and determination of the question would add to the certainty of the law.

ISSUE

Should leave to appeal be granted to Transit to challenge the costs order?

FINDING

The court must first determine whether there is a manifest error of law or a strong question of law which would add to the certainty of the law.

Here there was no manifest error of law apparent to the Arbitrator's decision and the certainty of the law would not be improved by granting leave on the issue of an arbitrator's discretion to award costs.

QUOTE

Pincus JA and Wilson J said:

“In the course of argument in this Court, Counsel for Transit put forward the submission that the arbitrator's view of the matter was wholly unreasonable, suggesting that the unreasonableness of the outcome showed that there must have been legal error involved. He argued that the arbitrator's failure to give an adequate reason for not awarding costs on an issues basis was a manifest error of law within para. (i) of s. 38 (5)(b) and that his failure to award costs on that basis was strong evidence of an error of law within para (ii)”. - paragraph 9 of (1999) Appeal 5600 of 1998.

“Counsel for transit urged earnestly upon us that an appeal from the arbitrator might, if decided in favour of Transit, have a beneficial effect, in encouraging arbitrators to consider giving costs of issues. But that is not the test in para.

(ii) of s.38(5)(b); what one has to look for under the second part of that paragraph is added legal certainty, not merely an increase in the tendency of arbitrators to accept a particular line of argument”. Paragraph 14 of (1999) Appeal 5600 1998

IMPACT

When appealing from a decision of an arbitrator the appellant has a heavy burden to prove that an appeal will be allowed to proceed.

It is especially difficult to challenge a costs order made during an arbitration.

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Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com