

Paris court upholds lockdown award

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The award was issued during covid-19 lockdown in France (Credit: Shutterstock/Javier Pina)

In the first known French decision on a covid-related set-aside request, the Paris Court of Appeal has refused to set aside an ICC award that was issued by a Paris-seated tribunal in March 2020 – 10 days into the first lockdown in France – and because of the circumstances signed by each arbitrator separately.

In a ruling on 30 November, the court's international chamber dismissed the challenge by a French subsidiary of Canadian renewable energy company Boralex and confirmed the US\$390,000 award in favour of French wind turbine construction company InnoVent.

The 53-page award, concerning six wind-turbine construction projects in northern France, was issued on 26 March 2020 by an all-French tribunal presided over by **Béatrice Castellane** and including **Thomas Deschryver**, appointed by InnoVent, and **Gaëlle Le Quillec**, appointed by Boralex. The set-aside application related to the irregular way in which the award had been signed.

Unable to meet because of the newly imposed lockdown and (it was argued) the general fear of the pandemic at that time, the two co-arbitrators did not sign the copy of the award generated by Castellane but each sent her a separate signature page, which they signed alone – Deschryver on 24 March and Le Quillec on 25 March.

Castellane then sent the award, along with the co-arbitrators' signature pages and a third page featuring her own signature, to the ICC to be communicated to the parties. Her own signature was dated 26 March.

Boralex argued in the set-aside proceeding that this made it unclear when the award had been signed and even if each arbitrator had signed the same document, putting the integrity of the arbitral process in doubt.

The Court of Appeal dismissed the argument regarding the signatures, holding that the French code of civil procedure does not require arbitrators to sign the same page on the same date or prevent them from signing separate signature pages to be consolidated into the award.

The court also held there was no ambiguity as to the date of the award, which was clearly dated 26 March on the first page. This matched the date of the last signature, that of Castellane as president of the tribunal.

As the ICC had not yet issued any covid-related guidance at the time the award was issued (it was to do so just one week later, on 9 April 2020), the court said the tribunal and secretariat had been free to proceed in any manner they deemed appropriate under the circumstances.

The court also dismissed an allegation that the tribunal had wrongfully denied Boralex the opportunity to question the CEO of InnoVent during the hearing, which took place in-person before lockdown, and awarded InnoVent €30,000 in costs.

Armand Terrien of Terrien Avocats in Paris, who acted for InnoVent in the appeal, tells GAR his client is "extremely satisfied with the result."

"This challenge was a thinly veiled attempt to obtain on a technicality what the tribunal denied Boralex on the merits and the court saw right through it," he says. "It is comforting to know that in an era of unprecedented procedural challenges and of remote hearings, French courts will have the arbitrators' backs."

In the Paris set aside proceeding

Court

- **François Ancel** (presiding judge)
- **Fabienne Schaller**
- **Laure Aldebert**

Counsel to Boralex (challenging the award)

- Pellerin De Maria Guerre

Luca de Maria in Paris

- Medici

Valence Borgia and **Zélie Héran** in Paris

Counsel to InnoVent (defending the award)

- Teytaud-Saleh

François Teytaud in Paris

- Terrien Avocat

Armand Terrien in Paris

- **Philippe Prigent** in Paris

In the arbitration

Tribunal

- **Béatrice Castellane** (President)
- **Thomas Deschryver** (appointed by the claimant, InnoVent)
- **Gaëlle Le Quillec** (appointed by the respondent, Boralex)

Counsel to Innovent (claimant)

- Montesquieu Avocats

Aymeric Druesne and **Mélissa Debara** in Lille

Counsel to Boralex (respondent)

- K&L Gates

Valence Borgia and **Charlotte Baillot** in Paris