

## DECISION

Appellate case to verify the legality and validity of Arbitration Court decisions not yet entered into validity

Yuzhno-Sakhalinsk Business № A59-2680/02-C8

On December, 20, 2002

Arbitration Court in structure:

Presiding: Bojko G.V.,

Judges Prudej T.G., Shevchenko,

Report prepared by Court Clerk Azizovoj V.A.,

Having considered in open judicial session the appeal complaint by Sakhalin Energy Investment Company Ltd on the 10/14/2002 decision A59-2680/2002-C8 of Arbitration Court of the Sakhalin Area accepted by judge Ivanovym V.V.,

Participating in the judicial session:

from the Claimant: Chugaeva A. V., by proxy from 6/21/2002,

from the Respondent: Safiulinoj J.R., by proxy from 11/15/2002 № 16-5534, Steninoj N.V., by proxy from 11/29/2002 of № 16-5721,

Has established:

The Company Sakhalin Energy Investment Company LTD. (further Sakhalin Energy) has addressed in court with a claim to federal entity Sakhalinrybvod (further Sakhalinrybvod) to recognize the invalidity of Decision №4, dated 6/21/2002, on the basis of which a 100,000 ruble penalty was imposed on the Company for refusal to provide timely, complete, credible information about environmental conditions.

By the decision of the Court on 10/14/2002, the claim is denied. The judicial certificate is motivated by the facts that the court did not established illegitimacy in the actions of Sakhalinrybvod, the general rules and terms of imposing of the official penalty were not broken, the bases of infringement are legally established, and finally, the character of unsubmitted information is taken into account.

In the appeal complaint the Claimant expresses disagreement with the accepted decision and specifies that the Court of the first instance failed to consider the circumstances, that a) documents requested of the Respondent were submitted to the Respondent before consideration of administrative materials, and that these supplementary documents do not contain new ecological information, and that, therefore, there can be no offense; b) beginning on 07/01/2002 new Civil Rights Code of the Russian Federation was commissioned, and that the Court should be guided by this body of law as it in force at the time of the administrative offense; c) the requested decision does not contain references to the rights of the Claimant's representative; d) the court has not evaluated the powers of Sakhalinrybvod to impose a penalty; e) the court has incorrectly applied administrative regulations as they relate to the statute of limitations of administrative responsibility; e) the offense is insignificant and the size of the penalty was determined without taking circumstances into account. The Company requests the decision of court to cancel the decision and satisfy its claim demands. Sakhalinrybvod is not in agreement with the findings of the complaint.

Having listened to participants of legal proceedings and investigated case materials, the Appellate Court does not find basis for the cancellation of judgment.

According to Article 84 of the RSFSR "Regarding protection of the environment," commenced 12/19/1991 №2060-1 and in effect until 07/01/2002, enterprises guilty of committing ecological offenses, in particular in providing

untimely or distorted information, refusal to provide timely, complete, credible information about environmental conditions and nuclear conditions, can be fined 50,000-500,000 rubles, imposed administratively. The exact size of the imposed penalty is defined by the entity imposing the penalty, subject to the character and type of offense committed, the degree of guilt of the offender, and the harm caused. Penalties for the specified offenses are imposed, within the limits of each entity, by specially authorized state bodies of the Russian Federation for the protection of environment, sanitary-epidemiological supervision of the Russian Federation, and technical inspection of the work of trade unions.

In reviewing case materials, it is clear that on 04/25/2000 Sakhalinrybvod requested reports from the Company regarding ecological monitoring for the period 1998-1999. On 05/05/2000, Sakhalin Energy forwarded the specified reports to the Respondent without appendices. On 12/20/2001 and 04/25/2002, Sakhalinrybvod letters №17-4243 and №17-1632 requested Sakhalin Energy to provide supplementary materials to the reports. 05/22/2002 the Claimant stated that letter № 02-499 answered the request, that in his opinion all necessary information is included in the text of the reports, and that the required appendices do not contain any new data. Thus, Sakhalin Energy's answer contains a refusal to grant the requested information. On 06/19/2002, State Inspector of Sakhalinrybvod reported on Sakhalin Energy's offense, as demonstrated by a refusal to provide timely, complete, credible information about environmental conditions. The report specifies that the case of administrative infringement will be considered on 06/21/2002 at 15:00 and that a copy of the report was delivered to Robert Hill, Sakhalin Energy's manager. In addition, Sakhalinrybvod's letter № 17-3436 of 06/19/2002, received by Sakhalin Energy on the same day, directed the report and has explained the rights stipulated in Article 247 of the Civil Rights Code RSFSR. 06/21/2002 Deputy Chief of Sakhalinrybvod issued decision № 4, which, based on an Article 84 of the Law of RSFSR "Regarding protection of the environment," subjects the Claimant to a penalty of 100,000 rubles for the offense specified in the letter of 06/19/2002.

The Appellate Court considers that the term for imposing an official penalty was not missed by the Respondent, as, by virtue of Article 38 of the Civil Rights Code RSFSR in effect until 07/01/2002, the official penalty could be imposed no later than two months from the date of the offense. The Claimant's refusal to provide the information occurred on 05/22/2002, Sakhalinrybvod acted on 05/23/2002, and the decision is pronounced on 06/21/2002.

The Claimant supposes that deadline to impose a fine should be estimated from the moment of failure to produce the report with appendices, i.e. as of 05/05/2000. The Court finds this reason to be baseless as on 05/05/2000 the refusal of the Claimant to grant the request for information did not follow, rather the Claimant only submitted reports without all supporting documents. A concrete refusal to provide supplementary documents was made by the Claimant in the letter dated 05/22/2002. This refusal forms the structure of an offense as described in the report of 06/19/2002. That fact that on the day that the decision was pronounced determining Sakhalin Energy to be administratively responsible for the provision of requested documents was the same day that the requested documents were received by the Respondent (irrespective of whether that decision was made before, as the Claimant states, or afterwards, as the Respondent asserts), does not release Sakhalin Energy from the responsibility as the offense had already occurred, and compliance with the requirements of a state entity to provide information or the intent to comply does not remove responsibility. This circumstance could be taken into account when determining the size of the penalty, as was done by the Respondent.

The Claimant points to the disproportionality of the imposed fine to offense committed, referring to Decision №86 from 8/2/2002 of (subsequently nullified) in which Sakhalinrybvod imposed a penalty of 50,000 rubles for a similar offense. The Respondent substantiated the size of the penalty, asserting that the damage rendered by the Company's failure to provide the information necessary for monitoring citizens and legal entities in the field of environmental preservation, is made apparent by the Sakhalinrybvod's inability protect natural resources. Without the requested data, it is not feasible to evaluate the possible outcomes of conducted activities. The Court believes that the size of the imposed fine was determined by the Respondent within the limits stipulated by the law as well and took into consideration all mitigating circumstances. Moreover, the Claimant in the claim statement does not dispute the size of the penalty, but instead considers the decision to be completely void in regards to the Company's administrative responsibility.

Further, Sakhalin Energy considers that the reports themselves are self-sufficient as relates to monitoring and supplementary documents would not contain new ecological information. However, in the reports references are made to appendices that are an integral part of the reports. Sakhalinrybvod asserts, that in the appendices there is information not reflected in the reports. The representative of the Claimant does not challenge this fact. The Court believes, that the report appendices contain the information on environmental conditions; therefore, refusal to grant access to them forms the structure of an offense.

In the appeal complaint, the Claimant asserts that Sakhalinrybvod has expanded its powers to bring Sakhalin Energy to account in terms of administrative responsibility. The Court considers that the Respondent is entitled to such a right, as Sakhalinrybvod is the authorized state entity in the field of the environmental protection. The powers of Goskomrybolovstvo (State Fisheries Committee) and Basin Management, which are parts of the same structure to which Sakhalinrybvod belongs, are determined by the decision of the Government of the Russian Federation on 10/19/1998 according to "Regarding special representatives of state bodies for the protection, monitoring, and regulation of fauna use and fauna habitat" and the Resolution of the Russian Federation on 12/30/1998 (№1594) "Regarding specially authorized state bodies of the Russian Federation for the protection of the environment," and also regulations regarding Sakhalinrybvod, authorized by the order of Goskomrybolovstvo on 12/27/2001 (№ 431).

The Complainant affirms that while manufacturing occurred there were infringements of its administrative responsibility, which were not taken into account by the Court of the first instance. In particular, in the report dated 6/19/2002 naming as the infringer Stephen H. MacVey, although Bob Hall signed the report. The Respondent explains, that Stephen H. MacVey listed in the report as the Director of the offending Company. The report and the decision was received by the employee of the Company, Robert Hill.

The Court considers, that manufacturing infringements were not permitted, since the Claimant was advised in the report regarding an administrative offense on 06/19/2002. In the report, the time and a location for reviewing the administrative material was specified. The rights stipulated by Article 247 of the Civil Rights Code of the RSFSR are explained to the Claimant in the cover letter dated 06/19/2002 (№17-3436). Thus, at the time of the report's compilation and consideration of the administrative materials by Sakhalinrybvod officials, the Civil Rights Code of the RSFSR are taken into consideration and no basis is found for satisfying the Complainant's demands. Under such circumstances, the Court find no basis for disaffirming the decision.

Being guided by Article 268271 of the Agrarian and Industrial Complex Code of the Russian Federation, the Court

**has decided:**

The decision of the Arbitration Court of the Sakhalin area dated October 14, 2002 regarding the case A59-2680/02-C8 is left unchanged, and the appeal complaint without satisfaction.

The decision enters into validity from the moment of its acceptance, but can be appealed in the Federal Arbitration Court of the Far East District, which meets bi-monthly through the Arbitration Court of the Sakhalin Area.

Presiding: G.V.Bojko

Judges: T.G.Prudej, V.V.Shevchenko

The resolution portion of the decision commenced 11/29/2002.