

Секция «Английский язык и право (на английском языке)»
Baseball arbitration: innovation is use
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Nowadays fast developing business relations need more advanced way of resolving conflicts than ordinary arbitration process can provide us with. As a result, a new form of arbitration, known as “baseball” arbitration, has appeared fairly recently.

Originally, the concept appeared both in Major League Baseball and in employment disputes when parties could not agree on a salary offer. The core element of this methodology is a written agreement made by the parties to submit a ‘baseball number’ - signifying the relief sought - to the arbitrator [1]. Then he is obliged to choose one last best offer, based on evidence heard, without changing figures in any circumstances. The arguing parties are interested in proposing a highly reasonable sum of money as it increases its chances to win the case.

Nowadays baseball arbitration is gaining its popularity in tax law. For example, in the year of 1994 Apple Computers and IRS resolved the tax conflict over the amount of U.S. \$114 million by means of the baseball technique, which saved for Apple Computers over \$4 million in legal fees. In contrast to ordinary civil litigation, it also prevented proprietary information from being revealed. The most significant conflict between Canada and the USA occurred in October 2004 when Elk Valley Coal Corporation (the world's second largest producer of the steelmaking coal) filed an offer for baseball arbitration with the Canadian Transportation Agency. Canada Transportation Act 1996 in its Part VI called “Arbitrations” provides final offer arbitration and regulates its procedure:

161. (1) A shipper who is dissatisfied <...> may submit the matter in writing to the Agency for a final offer arbitration to be conducted by one arbitrator or by a panel of three arbitrators.

161.1 (1) Within 10 days after a submission is served, the shipper and the carrier shall submit to the Agency their final offers, including dollar amounts.

165. (1) The decision of the arbitrator in a final offer arbitration shall be the selection by the arbitrator of the final offer of either the shipper or the carrier [3].

Current practical experience shows that baseball arbitration is increasingly becoming accepted in continental Europe. The United States are also planning to enter in such tax treaties with the U.K., Japan, Hungary, Luxembourg and Switzerland. Companies tend to use baseball method more and more as it provides them with certainty: you either get tax revenue or not [2].

Salary arbitration is a widespread conflict resolution method in labour law too. In 1993 California Labor Code §4065 implemented this methodology:

(a) In cases where either the employer or the employee have obtained evaluations of the employee's permanent impairment and limitations from a qualified medical evaluator under Section 4061 and either party contests the comprehensive medical evaluation of the other party, the workers' compensation judge or the appeals board shall be limited to choosing between either party's proposed permanent disability rating.

(b) The employee's permanent disability benefit awarded under paragraph (a) shall be adjusted based on the disability rating selected by the appeals board. If the appeals board chooses the permanent disability rating recommended by the employer, then the employee's permanent disability benefit award shall be reduced by the cost of the employee's comprehensive

medical-legal evaluation. If the judge chooses the permanent disability rating recommended by the employee, the permanent disability benefit award shall be increased by the cost of the employer's comprehensive medical-legal evaluation [4].

«Baseball» arbitration provides the parties with fastest, cheapest and fairest way of resolving a conflict as they are assumed to make the most reasonable offer they can to the arbitrator who will make the final binding decision without any court paperwork. The reason why this practice is becoming so widespread is that this mechanism expedites resolution and as a result helps to maintain mutually beneficial business relationship between the parties.

Источники и литература

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- 3) Government of Canada. Justice law website: <http://laws.lois.justice.gc.ca/eng/acts/C-10.4/>
- 4) States of California - Department of industrial relations: <http://www.dir.ca.gov/chswc/BasebalArbFfinal.htm>

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