

adverse decision. The view that an individual litigant might be regarded as having lost that right did not seem to His Honour to be at odds with the public interest which is involved in the question of observable bias. In conclusion His Honour considered that by reason for the applicant's failure to raise any objection throughout the whole of the arbitration, it lost the right to subsequently make such an assertion.

The second species of alleged misconduct pleaded by the applicant was that the arbitrator had been incompetent, in that he made many errors which, although by themselves did not amount to misconduct, taken together, showed that he had not understood what he was doing.

From this point, His Honour rejected these submissions and determined that many of the complaints particularised were not attributable to any lack of competence but, rather, were complaints that the arbitrator ought not to have followed the particular course that he did.

The conduct of the proceedings was a matter for the arbitrator and His Honour did not consider that it should be said that an arbitrator would necessarily be wrong to proceed to an interim determination as he did in this case, where he was of the view that it might shorten the proceedings or at least bring the matter to a head.

Most importantly, in determining whether the alleged mistakes and misunderstandings of the arbitrator when taken together constituted incompetence, His Honour expressed a reluctance to follow such an exercise. Further, he indicated that such an approach does not deal with the more significant question, which is whether any likely prejudice has been suffered such that there has been a miscarriage of the arbitration.

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ARBITRATION – APPEAL AGAINST AWARD

In the November 1994 issue of "The Arbitrator" (Vol. 13 No. 3) at page 163 a case note was published under the heading "Arbitration – Appeal Against Award – Whether "Manifest Error" of Law on Face of Award – Relevant Principles Explained". It is regretted that the Case Note omitted to identify the case *Natoli v. Walker*

EDITOR