

GREGORY K. MOSS

Clearing the Air Town Hall Meeting on
Arbitration Partial Final Award

Government of the Commonwealth of The Bahamas

v

Grand Bahama Port Authority Limited

Teachers' Union Building

Freeport, Grand Bahama

9th March, 2026

1. The issue is the present basis and extent of the obligation of the Grand Bahama Port Authority Limited (GBPA) under the Hawksbill Creek Agreement (HCA) to reimburse the Government of The Bahamas (GOTB) for the GOTB's administrative expenses in the Port Area.
2. The original HCA was signed in August, 1955 for a term of 99 years and was thereafter formally amended by Acts of Parliament on two occasions in 1960 and 1965. It was also informally amended without Acts of Parliament by various agreements between the GOTB and the GBPA, including in 1968 (the Benguet correspondence) and 1994 (the 1994 Agreement).
See Arbitration Ruling paragraphs 16 – 41 and 78 – 88.
3. Under clause 1(5)(d) of the original HCA, the GBPA was required to reimburse the GOTB annually for the cost of its administrative expenses in running the Port Area plus 25% for the GOTB's associated expenses elsewhere in The Bahamas. In 1994 the GOTB and the GBPA agreed to fix that reimbursement sum to \$500,000 per annum for 5 years and thereafter to negotiate the reimbursement sum at the end of each year. The Tribunal ruled that the effect of the 1994 Agreement was to replace clause 1(5)(d) of the original HCA with paragraph 3 of Schedule 1 to the 1994 Agreement.

See Arbitration Ruling paragraphs 79 – 83, 198, and 220 – 221.

4. The Tribunal ruled that the effect of the 1994 Agreement going forward, is that the GOTB and the GBPA may agree on the reimbursement which is due from the GBPA to the GOTB and that in the absence of any agreement between the GOTB the GBPA, that sum may be determined at the end of each year by a Tribunal or by the Bahamian Courts.

See Arbitration Ruling paragraph 224.

5. What the Tribunal did not determine is whether the GOTG can claim reimbursement from the GBPA under the 1994 Agreement for past years and, if so, how far back can such claims be made.

See Arbitration Ruling paragraph 225 – 227.

6. *The Arbitration Ruling was substantially in favour of the GOTB and the Tribunal invited the parties to “try and agree in identifying the outstanding issues (including damages and costs), and a procedure, including a timetable, for determining those issues, and should report back to the Tribunal by 6 March 2026, indicating what they have agreed, and what, if anything, they have been unable to agree.”*

See Arbitration Ruling paragraph 373(c).

7. As to which issues the respective parties won and lost, the effect of the Tribunal Ruling is as follows:

CLAIMS WHICH WERE MADE BY THE GOTB AND THE GBPA	RULING OF THE TRIBUNAL	EFFECT OF THE RULING
The GOTB asserted that the GBPA has breached clause 1(5)(d) of the original HCA and claimed: (1) A Declaration that the GBPA had breached clause 1(5)(d) of the original HCA:	The Tribunal held that: (1) The GBPA must pay the GOTB for its administrative expenses in the Port Area; (2) Those expenses were no longer incurred under clause 1(5)(d) of the original HCA. Instead those sums were now incurred under	The GOTB succeeded in its claim against the GBPA going forward but did so under the provisions of paragraph 3 of Schedule 1 to the 1994 Agreement rather than under the provisions of clause 1(5)

- (2) \$357,144 Million for such breach, paragraph 3 of Schedule 1 to the (d) of the original HCA. 1994 Agreement.
- (3) Past and future interest payable on that sum; (3) The GOTB and the GBPA should attempt to negotiate those expenses at the end of each year.
- (4) Alternatively, such sum as the Tribunal found due; (4) In the absence of any successful negotiation between the GOTB and the GBPA at the end of each year, the GOTB could commence either Arbitration proceedings or a Court Action against the GBPA to recover such sum.
- (5) Legal fees (“costs”) for the hearing before the Tribunal.

The GBPA asserted that it did not owe the GOTB any sum in respect of the clause 1(d) of the original HCA. The Tribunal held that the GBPA must reimburse the GOTB for its administrative expenses in the Port Area under the provisions of its paragraph 3 of Schedule 1 to the 1994 Agreement. The GOTB succeeded. The GBPA must reimburse the GOTB for the expense in the Port Area.

See Arbitration Ruling paragraph 224.

The GBPA sued the GOTB for a breach of its exclusive right to licence businesses in the Port Area. The Tribunal held that although the GBPA had an exclusive right under the original HCA to licence businesses within the Port Area, it had by its conduct and acceptance over the past decades waived that right and is now estopped (barred) in asserting such a right against the GOTB. The GOTB succeeded. The GOTB has the right to require its consent before the granting of business licences by the GBPA.

See Arbitration Ruling paragraphs 238 – 265

The GBPA sued the GOTB for a breach of its exclusive right to control immigration access into the Port Area. The Tribunal held that although the GBPA had an exclusive right under the original HCA to control immigration access into the Port Area, it had by its conduct and acceptance over the past decades waived that right and is now estopped (barred) in asserting such a right against the GOTB. The GOTB succeeded.

See Arbitration Ruling paragraphs 266 – 281

The GBPA sued the GOTB for a breach of its exclusive right to determine what is allowed into the Port Area as Duty Exempt. The Tribunal held that although the GBPA had an exclusive right under the original HCA to control what items are imported into the Port Area, it had by its conduct and acceptance over the past decades waived that right and is now estopped (barred) in asserting such a right against the GOTB. The GOTB succeeded. The GOTB has the right to control what items are allowed to be imported into the Port Area.

See Arbitration Ruling paragraphs

The GBPA sued the GOTB The Tribunal held that the GBPA The GOTB succeeded. for a breach of its alleged could not make claims for rights The legislations of the exclusive right to fix allegedly infringed in relation to Bahamas Parliament electricity and other utility third party utility companies but may regarding the operation rates in the Port Area. have a constitutional claim before and regulation of utility the Supreme Court for an companies apply in the infringement of its property rights. Port Area.

In any event, as a sovereign State, the Parliament of The Bahamas had the power to enact legislation regarding the operation and regulation of utility companies in the Port Area.

See Arbitration Ruling paragraphs 293 – 318

The GBPA sued the GOTB The Tribunal held that none of the The GOTB succeeded. for a breach of its alleged clauses of the HCA relied on by the The requirement for Port Area without the GBPA can fairly be said to address Bahamas Government requirement for a non- specifically the issue of the rights of approval for the sale of land in the Governmental approval for Bahamian to acquire or hold land Port Area to non- Bahamians in the Port Area. free from any regulatory measures. Bahamians is not in breach of the provisions of the HCA.

In any event, the enactment of legislation to require Bahamas Government approval for the sale of land in the Port Area to non-Bahamians was not in breach of the provisions of the HCA.

See Arbitration Ruling paragraphs 319 – 329

The GBPA sued the GOTB The Tribunal held that “the GBPA’s The GOTB succeeded. for past breaches of its *allegations of breaches in relation to* alleged exclusive right to *land development/ environmental* regulate land development/ *approval fail.*” environmental approval.

See Arbitration Ruling paragraphs 330 – 338.

The GBPA sued the GOTB The Tribunal held that : *THE GBPA succeeded in establishing that the Bahamas Government must “give reasonable and timely consideration to the proposed bye-laws”.*

(1) The GOTB “was indeed in breach of its obligations under the HCA to give reasonable and timely consideration to the proposed bye-laws”;

(2) “The damage said to have been suffered by the GBPA as a result of these breaches is that the GBPA has been prevented from “properly administering and controlling Freeport”, and that it has had “a deleterious im[pact] on Freeport and its value proposition” to potential investors and it has resulted in

Its claim for damages for the failure of the GOTB to do so is dubious at best.

“blighted landscape caused by the GBPA’s inability to demolish derelict buildings”.

See Arbitration Ruling paragraphs 339 – 349

The GBPA sued the GOTB The Tribunal held that:
for alleged diversion and
frustration of investment
projects from the Port Area.

The GOTB succeeded.

- (1) Due to the sale by the GBPA of its *“operational assets”* the and frustration by the *“GBPA had admittedly become GOTB of investment at least balance sheet insolvent, a projects from the Port state in which it has apparently Area. remained ever since”*;
- (2) There were *“understandable concerns on the part of Government about the source of financing”* for the *“Pegasus/Weller project”* and other credible GOTB concerns in relation to the Tractabel/Enron and Ginn projects ;
- (3) These claims failed.

See Arbitration Ruling paragraphs 350 – 363

CONCLUSION

The GOTB succeeded in its claim The GOTB and the against the GBPA going forward but GBPA are to attempt to did so under the provisions of resolve the outstanding paragraph 3 of Schedule 1 to the issues identified in 1994 Agreement rather than under paragraph 373(c) of the the provisions of clause 1(5)(d) of Tribunal’s Ruling. the original HCA. Failing a successful attempt, the Tribunal will resolve the same.

The GBPA failed on 7 of its 8 claims against the GOTB. Its only success was in respect of the issue of environmental bye-laws, and only to the extent of any breaches causing damage since 5 May 2018.

See Arbitration Ruling paragraphs 364 - 763

