

An Analysis of Dispute Review Boards in Public Sector Organizations in India

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ABSTRACT: Dispute review boards (DRBs) have grown in popularity as a permanent impartial alternative dispute resolution (ADR) mechanism since its first successful deployment in 1975, and have been used on a number of high-profile construction projects in the United States and across the world. The purpose of this study is to present a review of the DRB mechanism in the Indian Construction industry primarily focusing on the Public Sector Organizations. The study focuses on DRB cases in 28 such instances where recommendations were made by the members of the Dispute review board. It was found that 92% of the claims raised before the DRB in the 10 cases pertaining to the Airports Authority of India (AAI) were awarded in favor of the AAI and 60% claims raised before the DRB in cases pertaining to the National Highways Authority of India in 18 cases have been awarded in favor of the NHAI. An overall average duration of 239 days was observed between the First hearing to the final recommendations made by the DRB in the cases involving the AAI and an award of Rs. 5.24 Cr has been made in favor of the contractors by the subsequent Arbitration Tribunal (AT) as opposed to the awarded amount of Rs. 0.277 Cr by the DRB. In cases involving the NHAI, an award of Rs. 291.09 Cr. has been made by the subsequent 'AT' as opposed to an award of Rs. 17.72 Cr. by the DRB.

Keywords: Dispute Review Boards, Dispute Resolution Committee, Alternate Dispute Resolution, Arbitration

I. INTRODUCTION

There are five basic forms of construction dispute resolution, each of which has positive and negative attributes. These include partnering, dispute review boards (DRB), mediation, arbitration (both binding and nonbinding), and trial. (Martin & Thompson, 2011). A dispute review board (DRB) can take numerous different forms, but in general, a DRB panel consists of three industry professionals who provide suggestions to the parties to help them resolve disagreements during the project. A DRB panel should be constituted at the start of the project and meet periodically with the parties on the job site during

project execution to be most successful. The panel will become familiar with the work and the parties through regular reports and site meetings before a dispute occurs. If a disagreement arises, the panel can concentrate on the issues rather than having to learn about the project's history. A DRB panel, in most cases, does not make a decision. Rather, the panel suggests to the parties on how to resolve the conflict. The parties then have the option of accepting the proposed settlement or continuing the debate. DRBs are rendered useless when one or both parties become adamant in their positions and fail to comprehend the recommendations being made. (Martin & Thompson, 2011) Since 1975, dispute review boards (DRB) have been widely employed as an alternative dispute resolution (ADR) tool in construction projects across the United States. The fundamental idea behind a DRB is to enlist the help of three independent specialists throughout the project's building phase. These three specialists get familiar with the status of construction on the job site and are prepared to provide an impartial third-party advice in the event that a quarrel evolves into a construction-party dispute. (Menassa & Peña Mora, 2010). The earliest reported use of a form of DRB (then called a "joint consulting board") was on the boundary dam hydroelectric project in Northeastern Washington in the 1960s (Kirsh, 2008).

The DB (formerly DRB) system was initially used in India in 1994, when the World Bank funded projects of \$50 million or more. (ICA, 2016) The World Bank released a new edition of its standard bidding contract, "procurement of works," that gave the borrower three choices for resolving disputes, including the employment of a three-person dispute board. For contracts worth more than \$50 million, the three-person DB is required. (DRBF, n.d.). The "FIDIC MDB Harmonized Conditions of Contract" or "Pink Book" was published by FIDIC, and it incorporated a DB procedure for both conflict avoidance and settlement. These contract requirements, which were modified in 2010, are now extensively used by developing nations for significant infrastructure projects (DRBF, n.d.). To simplify the work process, the process of formulation of "Dispute

Redressal Committees” was introduced in the CPWD works manual in 2012. (CPWD, 2010) The Indian Council of Arbitration published the “STANDARD OPERATING PROCEDURES FOR DISPUTE BOARDS IN INDIA”. (ICA, 2016)

II. LITERATURE REVIEW

A total of 1,042 U.S. construction projects that had DRB as part of their contract provisions were extracted from the Dispute Review Board Foundation database and were analyzed. (Menassa & Peña Mora, 2010) studied the effectiveness of DRB as a preventive measure against the escalation of conflicts to disputes is first studied. For those projects that had disputes heard by a DRB panel, the data was further analysed to determine the effectiveness of the DRB as an ADR technique that can help in the resolution of a dispute at the project level without further escalation to arbitration or litigation. The results of the study indicate that DRBs have been successfully implemented in all three construction sectors in the United States. The effectiveness of DRB as a prevention technique was observed on approximately 50% of the 810 projects where no disputes were ever heard through a DRB panel formal hearing. For the

remaining 50% of the projects, the effectiveness of DRB as an ADR technique was found to exceed 90% when comparing the number of disputes that were settled due to DRB recommendation to those that were actually heard during a DRB hearing session.

(Menassa & Peña Mora, 2010) in their study suggested a DRB Effectiveness ratio where, DRB hearing is assumed to be effective in resolving a dispute if the project participants agreed to a final settlement of the dispute based on the DRB panel recommendation. Thus, the DRB effectiveness ratio for each of the projects in the 810 data set that had disputes heard by DRB was determined as the ratio of number of disputes settled per project to the number of disputes heard per project. Table 1 shows the DRB Effectiveness ratio for different Project types. In Table 1, The DRB effectiveness ratio comes out to be 1.00 for the building projects analyzed by (Menassa & Peña Mora, 2010) in two categories of Value and the DRB Effectiveness ratio value is high for Highway and Tunnel projects as well. The study clearly represents how effective DRB has been in resolving construction disputes in the US Construction industry in the past 50 years.

Value (\$ million)	DRB Effectiveness Ratio		
	Building	Highway	Tunnel
<100	1.00	0.99	0.93
100-500	1.00	0.96	0.94
500-1750	-	0.91	1.00

Table 1 DRB Effectiveness Ratio for Difference Project Types. Adopted from (Menassa & Peña Mora, 2010)

In Australia, the DRB was first introduced in the year 1987 on the Sydney outfall tunnels and ocean risers’ project by the Sydney Water Sewerage and Drainage Board (SWSDB) and subsequently in Warragamba Dam Project. Both these projects were completed without any unresolved disputes and the DRB were seen as a successful method. However, since then Australia has used the DRB mechanism in just 19 more projects. Upon further analysis it was observed that in the Australian Construction industry DRB have a 100% success rate in preventing disputes from reaching arbitration and litigation. Furthermore, DRB were found on an average to cost 0.15% to 0.26% of the total project costs as compared to the 8-10% of total project cost for arbitration and litigation. (Gerber & Ong, 2011). In Egypt, the study conducted by (El-Adaway & Ezeldin, 2007) concluded that despite the wide range of current dispute-resolution methodologies, the employment of DRBs should mitigate the negative effects of disputes in Egyptian large-scale construction projects.

The study by (Kasana et al., 2022) focuses on the importance of completion of projects within the stipulated time and budget meanwhile without

compromising with the quality of work. Standardization of methods, optimal designs, and appropriate materials may all assist to maximize a building's or project's value and utility (Sreekumar et al., 2022). According to a few writers, the Indian construction sector faces a slew of issues, including construction quality, sustainability, and quality benchmarking (Yadav et al., 2022). Automation guarantees that the building process is error-free and timely at all stages, from data collection or acquisition through analysis, progress depiction or visualization, and element deviation identification (Gupta et al., 2022). The mobility of the occupants are influenced by the structure's construction and the types of activities that take place within (Kumari et al., 2022). (Basu et al., 2017) focused on fast-track strategies for upgrading older buildings to realize a massive cost-cutting opportunity. Any alteration to an existing structure or physical and operational enhancements to a building system that improves energy efficiency is referred to as an energy efficiency retrofit (Basu et al., 2019). Due to numerous adjustments, scope changes, and decision delays, consultants with limited expertise in delivering appropriate design may cause project

delays (Dasgupta et al., 2021). (S. & Kumar, 2019) focused that most important stakeholder, the end user/occupant, is given the opportunity to offer feedback on building performance. (Seshadhri & Paul, 2018b) (Seshadhri & Paul, 2018a) In their study indicated that Government agencies lack effective monitoring procedures.

During the execution of the construction project, The Dispute Resolution Board (DRB) is the project's only dispute resolution body, and its rulings are non-binding. Only 20 cases of Indian infrastructure projects have been referred to the Dispute Resolution Board Foundation (DRBF), and only four have been successful in addressing all issues. (Kathpalia & Jhamb, 2021) The DRB process has been modified by the Airports authority of India in their General conditions of contract as well as their Works Manual. The DRB has been replaced by Dispute Resolution Committee (DRC). This DRC shall be appointed by the Corporate headquarter Level (CHQ) for works above Rs. 15 Crores and for works costing upto Rs. 15 crores the DRC is appointed by RED/ED Engg. The Airports authority of India appoints its own officials for the DRC proceedings as the members however unlike CPWD there is a provision to appoint additional members in DRC from the list of empaneled Arbitrators. The DRC comprises of 3 members i) GM from the same discipline as the work ii) Joint GM/DGM from Finance Dept. iii) Joint GM/DGM from either Planning/Engg./CNS/ATM/Communication department. DRC adopts a procedure based on principles of equity and natural justice, giving full opportunity to both the parties to present their view points to their satisfaction. The contractor must report the dispute to the Executive Director (Engg.)/Regional Executive Director/Member (Plg)/Chairman, AAI for the Dispute Resolution. The competent authority shall within 15 days refer the matter to DRC. The DRC shall be constituted on an AD-HOC basis and it is not a standing committee as was the case with CPWD. The DRC shall give the parties 2 weeks for written response. The DRC must submit its decision within 45 days (30 day extension may be granted) to the competent authority. If the DRC is unable to submit its decision within the timeline as decided upon, the Party may request for the Appointment of Arbitrator within the next 30 days. If the Party refuses to accept the Decision of the DRC, it may request to appoint an arbitrator within the next 30 days to the Executive Director (Engg.)/Regional Executive Director/Member (Plg)/Chairman, AAI.

In general, NHAI EPC/IRCC contracts include a provision for DRB/DRE as the first level of dispute settlement between the Employer and the Contractor. DRB is made up of three members that have prior expertise with the sort of construction involved in the project as well as contract interpretation. Members of the DRBs are often retired

Chief Engineers or higher from state PWDs, the Ministry of Road Transport & Highways, CPWD, MES, BRO, and other agencies, and fall into the same category as members of Arbitral Tribunals. Furthermore, the Member nominated by one party to the DRB must be approved by the other party. Even the third Member, who is chosen by the party candidates, need approval from both parties. (Planning Commission, 2010)

DRB is formed within 34 days of the contract award and continues to operate throughout the contract duration until the Defects Liability Period expires (DLP). In reality, even after its normal duties have ended, the Board remains accessible to resolve any matter presented to it by the parties. (Planning Commission, 2010) The Employer and the Contractor pay the DRB members a monthly retainer charge until the DLP is completed in equal parts. The Board Members visit the job site once every three months until the work is completed or as asked by the Employer/Contractor. The site visits comprise a casual discussion of the work's progress, an inspection of the work, and a review of the parties' requests for recommendations. The Board writes a report detailing its operations during each site visit at the end of the tour. The NHAI has accepted the FIDIC general condition contract for dispute resolution by making minor changes to the process before sending the matter to the DRB, as well as removing the section that provides for an amicable settlement period before arbitration. (Planning Commission, 2010)

III. METHODOLOGY

The DRB proceedings within a project in the public sector organizations of India are kept as confidential. The author requested the Airports authority of India to provide DRB recommendations in Civil Works for its projects. 10 such DRB proceedings of the Airports Authority of India (AAI) are analyzed in this study along with 18 cases involving the National Highways Authority of India (NHAI). (Paul & Basu, 2016) in their study identified cases from the public domain available on the web to identify the scenarios pertaining to Time and Cost Overruns in construction projects. The cases for NHAI in this study were accessed from the High Court Orders available on the Web. The analysis is focused on the Duration of the DRB proceedings and the subsequent awards on the claims by the DRB and the Arbitral Tribunals.

IV. CASE STUDIES

Over 28 Cases were analyzed in this limited Study. Case no. 01 to 10 were cases where the Airports Authority of India was either the Claimant or the respondent. Whereas Case no. 11 to 28 are cases where National Highways Authority of India are either the Claimant or the Respondents.

In Case 01, the claimant issued a notice to appoint the DRC on 22.12.2018. The DRC gave its final recommendations on 11.10.2019. 8 claims were raised and the DRB gave recommendations in favor of the respondent in every claim. The claimant referred the claims to 'AT'. The 'AT' awarded in favor of the claimant in 6 claims and awarded 1 counter claim of the respondent. DRC favored the claimant in all the claims. The 'AT' overturned the decision of the DRC in majority of the claims. The duration taken by DRC to make recommendations is far beyond the stipulated duration of 45 days. All the members of the DRC are employees of the AAI.

In Case 02, the claimant issued a notice to appoint the DRC on 13.06.2017. The DRC gave its final recommendations on 20.12.2017. 8 claims were raised and the DRB gave recommendations in favor of the respondent in every claim except for 1 part claim of value Rs. 10,000. The claimant referred the claims to 'AT'. The 'AT' awarded in favor of the claimant in 5 claims. DRC favored the claimant in all the claims. The 'AT' overturned the decision of the DRC in majority of the claims. The duration taken by DRC to make recommendations is far beyond the stipulated duration of 45 days. All the members of the DRC are employees of the AAI.

In Case 03 & 04, DRC favored the claimant in the claim. The 'AT' overturned the decision of the DRC. The duration taken by DRC to make recommendations is far beyond the stipulated duration of 45 days. All the members of the DRC are employees of the AAI.

In Case 05, The 'AT' rejected the application of the respondent that the correct procedure was not followed by the claimant and the 'AT' has no jurisdiction until all the steps mentioned in the General Conditions of Contract are exhausted. However, the 'AT' rejected the respondents' application and went ahead with the arbitral proceedings stating that invoking DRC is not mandatory. Steps must be taken to avoid such instances as these weaken the role of DRC as a DRM.

In Case 06, DRC favored the claimant in almost all the claims. The duration taken by DRC to make recommendations is beyond the stipulated duration of 45 days. It took 1161 working days to complete the DRC process. The 'AT' award is awaited. The stipulated period of DRC recommendations is not being adhered to by the PSU and all the members of the DRC are employees of the AAI.

In Case 07, DRC favored the claimant in the claims raised. The 'AT' awarded an amount of 1.8 cr. The duration taken by DRC to make recommendations is far beyond the stipulated duration of 45 days. All the members of the DRC are employees of the AAI.

In Case 08, the DRC was constituted on 17.07.2019. The DRC gave its final recommendations

on 05.02.2020. 18 claims were raised and the DRB gave recommendations in favor of the respondent in 16 claims. The claimant referred the claims to 'AT'. The 'AT' awarded 0.29 cr. in favor of the claimant.

In Case 09, The DRC was constituted on 29.04.2015. The DRC gave its final recommendations on 21.09.2017. 8 claims were raised and the DRB gave recommendations in favor of the respondent in 8 claims. The claimant referred the claims to 'AT'. The 'AT' awarded is awaited. The duration taken by DRC to make recommendations is far beyond the stipulated duration of 45 days.

In Case 10, The DRC was constituted on 28.08.2018. The DRC gave its final recommendations on 28.05.2019. 6 claims were raised and the DRB gave recommendations in favor of the respondent in 6 claims. The claimant referred the claims to 'AT'. The 'AT' awarded is awaited.

In Case 11, Appellant issued notice of dispute to the engineer, however received no response. DRB did not make recommendations on accounts of resignation of one of the members of the DRB. The replacement couldn't be found within the prescribed period. The key point of the case in regards to DRB may be lack of pre enlisted members for the DRB in case of resignation or retirement of any member and the duration to appoint new member in case of a member resigning or retiring may be increased. (Bakhru, J. & Ahmed, J., 2014)

In Case 12, the DRB opined in favour of the claimant (NHAI). The respondent being dissatisfied sought a reference of disputes to arbitration. However, the 'AT' award was in favour of the respondent. Being aggrieved the claimant further appealed in the high court on 2 claims of the award. The learned judge found no merit in the appeal and dismissed the same leaving the parties to bear the cost. (Kaul, J. & Sanghi, J., 2012)

In Case 13, The DRB opined in favor of the claimant (NHAI) by a majority of 2:1 the respondent being dissatisfied sought a reference of disputes to arbitration. However, the 'AT' award was in favor of the respondent. Being aggrieved the claimant further appealed in the high court. The learned judge found no merit in the appeal and dismissed the same. DRB recommendations were completely overturned by the 'AT' and by the high court. The DRB favored the claimant. (M. Singh, J., 2016)

In Case 14, the DRB recommendations were in favor of the claimant (NHAI). Dissatisfied with the DRB recommendations the respondent referred the claims to the first 'AT', however NHAI referred their counter claims to a second 'AT'. The first 'AT' awarded an amount of 200 cr. In the favor of the respondent. The second 'AT' awarded an amount of 12.14 Cr. in the favor of the claimant. (Muralidhar, J., 2017a)

In Case 15, The DRB recommendations for claim 1 were in favor of the claimant (NHAI) and for claim 2 were in the favor of the respondent. Dissatisfied with the DRB recommendations the respondent and claimant both referred the claims to 'AT'. The 'AT' awarded in favor of respondent in both the claims. 'AT' agreed with 1 recommendation of the DRB and overturned the other. All recommendations of the DRB were not in favor of the claimant. (Narula, J., 2019)

In Case 16, The DRB gave recommendations in favor of the claimant (NHAI) by a majority of 2:1 by rejecting the claims. Dissatisfied with the DRB recommendations the respondent approached the 'AT' for a claim of 6.63 cr. The 'AT' awarded in favor of the respondent and awarded Rs. 4.51 cr. DRB gave recommendations in favor of the claimant. After a reminder to the engineer on 6th sept 2006, the DRB was approached and the recommendations were given by 27th December 2006. The high court found no ground to interfere with the award. (Muralidhar, J., 2017d)

In Case 17, The respondent raised 5 claims to the DRB. DRB gave recommendations on 4 claims only. The DRB gave 2 recommendations in favor of the claimant (NHAI). Dissatisfied with the recommendations, the parties referred the claims to the 'AT'. The 'AT' awarded all the 5 claims in favor of the respondent. All recommendations of the DRB were not in favor of the claimant. The 'AT' awarded all the claims in favor of the respondent. (J. Singh, J., 2020)

In Case 18, The DRB recommendations were not acceptable to the respondent. Dissatisfied with the DRB recommendations the respondent approached the 'AT' for a claim of around 8.64 Cr. The 'AT' awarded in favor of the respondent and awarded Rs. 4.60 Cr. (Ahmed, J. & Sachdeva, J., 2015)

In Case 19, The respondent raised 6 claims to the DRB. Dissatisfied with the recommendations, the respondent referred the claims to the 'AT'. The 'AT' awarded claim no.s 1.1,1.2,2,3 unanimously claims in favor of the respondent. Claim no.s 1.3,1.4,1.5 and 4 were rejected. Awards were made for claim 5 and 6. It was found that there were difference between what was claimed before the DRB and what is being claimed before the 'AT'. (Muralidhar, J., 2015)

In Case 20, The DRB did not render decision. The respondent referred the claims to the 'AT'. Due to lack of decision or recommendations by the DRB, the claims were referred to the 'AT'. (Shakdher, J., 2014)

In Case 21, the respondent raised 1 claim pertaining to price escalation to the engineer which was rejected the next day. The respondent referred the claim to the DRB which decided in favor of the

claimant. Dissatisfied with the recommendations, the respondent referred the claims to the 'AT'. The 'AT' awarded the claim in favor of the respondent. The DRB made recommendations in favor of the claimant which was further overturned by the 'AT' and the single judge bench of the high court. (Shakdher, J., 2013)

In Case 22, The DRB rejected the claims of the claimant. The respondent referred the claims to the 'AT' which was again rejected the claims of the claimant. The claimant referred the claims to the high court citing conflict of interest as certain members of the DRB and the presiding arbitrator of the 'AT' were previous consultant of the NHAI and never disclosed the fact. The conflict of interest of the members of the DRB and the 'AT' led to the formation of a new 'AT' as per the judgement of the high court. (Muralidhar, J., 2012)

In Case 23, the respondent raised 2 claim before the DRB. The DRB favored the respondent in claim 1 but rejected claim 2. Dissatisfied with the recommendations, the parties referred the claims to the 'AT'. The 'AT' awarded both the claim in favor of the respondent. The DRB favored the claimant for 1 claim which was again overturned by the 'AT'. The court upheld the arbitral award. (Manmohan, J., 2013)

In Case 24, Claim no. 18-24 were referred to DRB on 19th Nov 2005. DRB made no recommendations within 56 days. DRB extension date not agreed to by the respondent. The claimant gave notice to respondent for commencing arbitration on 11 Aug 2006 on all the 24 claims. The respondent however appeals that the claims are not arbitrable since the notice for arbitration was not given within 14 days of expiry of the 56 day period for DRB. Provision to safeguard claimants from such instances to be made within the contracts. (Endlaw, J., 2009)

In Case 25, The respondent sent notice to the team leader but received no response. The notice for invoking DRB was made on 24th April 2006 and the recommendations of the DRB were made on 7th sept 2006. The DRB gave its recommendation with a mistake in calculation. The respondent pointed out the error but received no response from the DRB. Dissatisfied the respondent referred the claims to the 'AT'. The 'AT' awarded the claim in favor of the respondent. The DRB failed to correct its mistake and became unresponsive. (Muralidhar, J., 2017c)

In Case 26, Claims raised before the engineer on 18th Nov 2005, the engineer refuted the claims on 18th march 2006. DRB made no recommendations within the stipulated time. No recommendations made by the DRB within the stipulated time. 'AT' awarded in favor of the respondent. (Muralidhar, J., 2017b)

In Case 27, The DRB gave its recommendation on 24 Dec 2008. The DRB gave its recommendations on 2 disputes. The respondent

dissatisfied with the second recommendation referred the claims before the 'AT'. The 'AT' gave the decision in favor of the respondent. DRB recommendations were overturned by the 'AT'. (Sharma, J., 2010)

In Case 28, The respondent referred its claim before the DRB. The DRB unanimously gave recommendations in favor of the respondent. The claimant approached the 'AT' and the high court with the decision being in line with the DRB recommendations. The high court order noted that claimant deliberately exhausted the all the DRM up to the 4th tier of a learned single judge. The judgement specifically talks about the claimant not heeding to the advice of the DRB nor the advice of the 'AT' and nor to the legal view after the 'AT'. The very objective of the DRB seems to be lost at the end of the claimant. (Kaul, J. & Kaur, J., 2013)

V. RESULTS AND DISCUSSION

The DRB process is different for different organization, however in the case of the AAI, the duration between the notice of formation of DRB and the final award date is as given in the table below in Table. The standard document for civil works for the

AAI has a stipulated time 45 days for the resolution of the claims raised by the claimant and finalization of the recommendation by the DRC, however the data collected clearly indicates that in none of the cases was this stipulated time met. The range of the DRB's duration between the first hearing date and the final recommendation date is 67 to 737 days. The box plot clearly indicates the actual working days for the DRB hearings.

In fig 1. The box plot clearly indicates an average value of 239 days for the time taken between the first hearings of the DRC to the date of the final recommendations. However, the median value comes out to be 94 days. The contract allows for an extension of up to 30 days that makes the total allowable duration up to 75 days. The median value of 94 is still higher than the allowed time. In fig 2. The average overall duration for the DRB process in the AAI from the collected data comes out to be 333 days and a median value of 176 days. Considering the overall allowable duration of 90 days considering all the time given for referring the disputes to the engineer to the final date of DRB decision the median value from fig 2 is much higher.

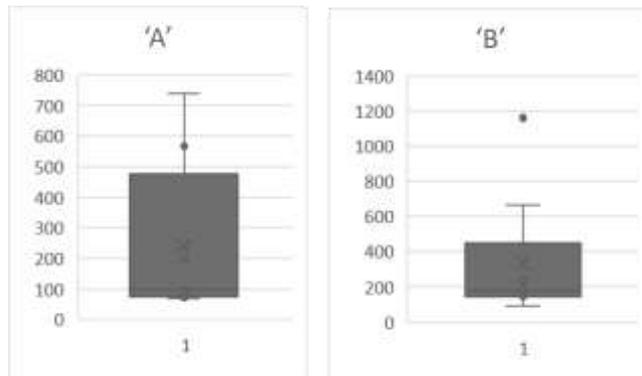


Figure 1. (Above) Duration Analysis (AAI Cases) A- Duration between First Meeting to Final Recommendations, B – Overall Duration of DRB Proceeding

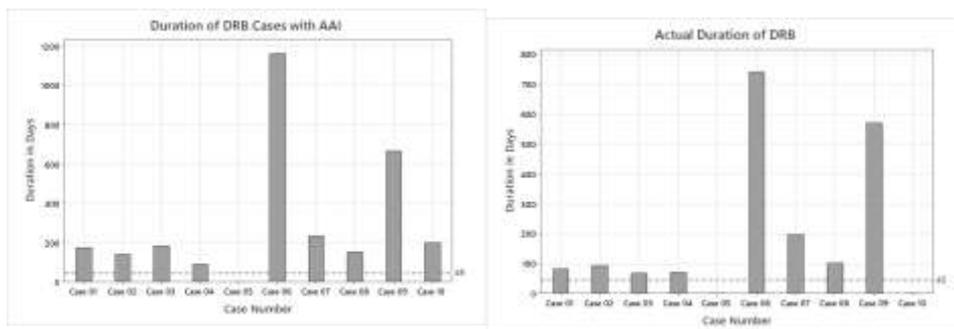


Figure 2. Bar Chart representing duration of DRB proceeding with respect to allowed duration.

CASE No.	Notice for DRB Constitution Date (Actual)	DRB Constitution Date (Actual)	DRB Start Date (First Hearing Date)	DRB End Date (Final Award Date)	DRB Duration in days (Actual Working days) 'A'	Overall Duration of DRB Process (days) 'B'	Extra Duration over the Contract period for DRB 'C'
1	22.12.2018	-	30.04.2019	07.08.2019	81	176	131
2	13.06.2017	-	10.08.2017	20.12.2017	94	142	97
3	25.02.2019	-	24.07.2019	23.10.2019	67	182	137
4	16.07.2018	-	06.08.2018	19.11.2018	72	90	45
5	-	-	-	-	-	-	-
6	26.10.2016	-	08.03.2019	19.01.2021	737	1161	1116
7	-	19.09.2017	16.11.2017	26.07.2018	197	235	190
8	-	17.07.2019	23.09.2019	05.02.2020	101	152	107
9	-	29.04.2015	01.09.2015	21.09.2017	568	667	622
10	-	28.08.2018	-	28.05.2019	-	200	155

Table 2 Duration Analysis (AAI Cases)

The difference in the value is significant in the overall duration of the DRB process as compared to 'A'. In fig 3. From case 1 to case 6, the duration between the issuance of notice of DRB constitution and first hearing is on an average 245 days and the median value comes out to be 130 days which is much higher than the stipulated duration of just 15 days as per the contract/ works manual of the AAI. In 100% of

the analyzed cases for the AAI, the constituted DRB consists of internal members. These members belong to different departments within the airports authority of India such as the finance, law, civil etc. The higher duration between the notice of DRB issued by the claimant and the date of first hearing indicates a point of pain in the process of the DRB in the AAI.

CASE No.	No. of Claims Raised	No. of Claims Rejected by DRB	No. of Claimed Amount (in Cr. Interest)	DRB Awarded Amount (in Cr.)	Arbitration Award (in Cr.)
1	8	8	1.37	0	0.65
2	8	7	0.13	0.001	0.0289
3	1	1	1.38	0	1.78
4	2	2	4.33	0.05	Awaited
5	-	-	1.22	-	0.7
6	12	10	4.81	0.056	Awaited
7	9	8	3.59	0.17	1.8
8	18	16	-	-	0.29
9	8	8	-	-	Awaited
10	6	6	-	0	Awaited

Table 3 Claims Analysis (Case 1-10)

In the analyzed cases for the AAI, total raised claims come out to be 75 out of which the DRB gave the award in the favor of the claimant in only 9 such claims. 92% of the claims submitted by the contractor are given in favor of the respondent, ie. The AAI. In 100% of the analyzed cases for the AAI, the constituted DRB consists of internal members. These members belong to different departments within the airports authority of India such as the finance, law,

civil etc. In all the cases, the claimant has referred the case before the arbitral tribunal. The overall award made by the DRB in this limited study for the AAI is 0.277 Cr., however upon referring these awards to the 'AT' the arbitral tribunal has awarded in favor of the claimants an amount equal to 5.24 Cr. Plus interest (5 award awaited) against an overall claimed amount of 16 Cr plus interest.

CASE NO.	No. of Claims Raised	No. of Rejected DRB	Claims by	DRB Awarded Amount (in Cr.)	Arbitration Award (in Cr.)
11	2	-		0	7.16
12	2	2		-	-
13	5	5		-	-
14	10	10		-	200
15	2	1		4.56	7.42
16	1	1		0	4.51
17	5	3		12	37
18	4	4		0	4.6
19	6	6		0	23.18
20	8	-		0	2.29
21	1	1		0	-
22	-	-		-	-
23	2	1		1.16	1.47
24	7	-		0	-
25	1	1		0	1.31
26	1	-		0	2.15
27	2	1		-	-
28	1	0		-	-
TOTAL	60	36		17.72	291.09

Table 4 Claims Analysis (Case 11-28)

In the analyzed cases for the NHAI, total raised claims come out to be 60 out of which the DRB gave the award in the favor of the claimant in only 24 such claims. 60% of the claims submitted by the contractor are given in favor of the respondent, i.e. The NHAI. In 100% of the analyzed cases for the NHAI, the constituted DRB consists of external members. These members belong to different departments such as CPWD, judges, arbitrators etc. As compared to the AAI, the no. Of claims awarded to the contractors by the DRB in works with NHAI is much higher. This may be due to the fact that the DRB in the NHAI consists of neutral members from outside the organization. In all the cases, the claimant has referred the case before the arbitral tribunal. The overall award made by the DRB in this limited study for the NHAI is 17.72 cr., however upon referring these awards to the ‘AT’ the arbitral tribunal has awarded in favor of the claimants an amount equal to 291.09 cr. Plus interest.

VI. CONCLUSIONS AND RECOMMENDATIONS

The following conclusions may be drawn from the conducted study:

1. The AAI Works manual States that the Members of the Dispute resolution Committee shall be internal employees of the AAI and when appointed members of the DRB shall act as ‘Conciliators’ and abide to the principles of conciliation provided in the Arbitration and Conciliation Act, 1996 and amended in 2015. However, the Results of the case studies and the Questionnaire Survey of industry professionals

clearly indicates that the recommendations are being made in favor of the AAI before furnishing their recommendations in the DRB Report. The GCC of the AAI Work Manuals provide for the appointment of neutral parties as members of the DRB, however in the studied 10 cases of the AAI, all the members of the DRB were internal members. The condition for appointment of neutral members may be made mandatory instead of optional. In case of internal members being involved, a standing committee may be formed which looks after DRB proceedings of different regions that abide by the Principles of Arbitration and Conciliation Act without any conflict of interest towards the Public Sector organization.

2. The NHAI follows a modified version of FIDIC general conditions of Contract. The FIDIC General conditions of contract state that neutral members must be appointed for the DRB, however from the study conducted by the author it is clear that 60% of the claims have been awarded in favor of the NHAI by the DRB which were then given in favor of the claimant by the ‘AT’ and a total amount of 291.09 Cr. has been awarded to the claimant as opposed to the awarded amount of just 17.72 Cr by the DRB. This indicates that either there is a lack of expertise of the members of DRB or that the members of the DRB are somehow influenced into giving decisions in favor of the NHAI. A thorough check may be done to ensure that neither of the parties are able to influence the Neutral members.

3. The study indicates that neutral DRB members have been found to give favorable recommendations to the Claimant as opposed to the recommendation made by the DRB members (internal members) where AAI was involved, wherein 92% of the claims raised by the claimant have been rejected by the DRB.
4. The study indicates that the Duration of the DRB to make recommendations in the cases involving the AAI was on an average 333 which is way beyond the acceptable duration of 45 days (plus extension). This indicates that the contract clause which clearly states that the parties are allowed to refer the claims to Arbitration after this duration of 45 days expires with prior notice to the respondent is not being abided by. A standing mechanism may be incorporated within the contract to automate the process and transfer the case to the standing tribunal as and when the duration to make recommendations by the DRB expires. The claimant has waited for DRB recommendation up to a maximum value of 1161 days and a minimum duration of 67 days in the studied cases involving the AAI.
5. The GCC mentioned in the AAI Works manual does not include a clause for replacement of member in case of retirement or resigning. Contractual provisions may be done to provide extensions to tenure for the members of the DRB to conclude the proceedings before retiring. By abiding by the stipulations of durations made in the DRB clause this extension to tenure may be negligible. The other way to go about this could be fixing the age limit for members of the DRB. The World Bank standard document for Procurement has clearly stated to keep a list of potential members as part of the Contract Document. This list may be utilized for selection of new members in case of retirement or resignation of a DRB member. This shall help in expediting the DRB process within the stipulation duration. In case 11, it was clearly established that due to lack of replacement of a resigned member, the DRB was unable to give any recommendations.

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