

BC4609

*Судебный Комитет  
Арбитраж*

*автор А. И. Угрюмов*

# DOCUMENTS

CONCERNING THE COMPETENCE  
OF THE ARBITRATION COURT  
SET UP IN CONNECTION WITH  
THE QUESTIONS OUTSTANDING  
BETWEEN THE

## LENA GOLDFIELDS

COMPANY LIMITED

AND THE

## U. S. S. R.

CENTRAL CONCESSIONS  
COMMITTEE

OF THE

U. S. S. R.

MOSCOW 1930.



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## INTRODUCTION

The concession agreement was concluded between the Government of the U.S.S.R. and the English Company, the Lena Goldfields, on April 30th, 1925. One of the provisions was that the Government granted the Company the right either to accept or terminate the agreement within three months, while itself retaining the right to accept or terminate the agreement within one month after the Company had affixed its signature.

The period of three months was provided for the Company in order to enable them to secure the necessary means for working the concession.

After the lapse of the agreed period the Company ratified the agreement and the latter was confirmed by the Council of People's Commissaries of the U.S.S.R. and became effective from November 14th, 1925.

In accordance with the concession agreement, the Company was granted the right to work the metal and mineral resources in the following districts: Lena-Vitim Mining Area (gold); the Sysert and former Revdin Mining Area in the Urals (copper, iron, etc.); the Zmeinogorsk and Zyrian areas in the Altai (mixed ores). In addition to the above-mentioned objects of the Concession the Company was also granted the right to navigate the Lena River, to exploit a number of branch railway lines, and to run various subsidiary undertakings.

While handing over to the Company extensive areas for exploitation and endowing them with considerable rights, the agreement stipulated for an appropriate industrial development of the districts, in accordance with modern technical achievements, and a reasonable exploitation of the mineral resources.

In the first two years, the Company carried out the stipulations of the agreement, but in the third year a number of delays occurred in its work which were due to lack of financial resources. In spite of credits granted to the Company by the Soviet Government, the former could not carry out its building programme because of insufficient means. The nearer the specified dates approached the clearer it became that the Company would be unable to complete the various enterprises in the specified time, that it would be unable to carry out its undertaking, and that as a result it would be necessary to annul the concession agreement in accordance with paragraph 86 of the said agreement.

These conditions were already quite clear in 1929, and the following years, 1930 and 1931, were bound to reveal a number of deficiencies in the carrying out by the Company of important stipulations, as a result of which the concession agreement would have to be annulled.

Such were the conditions when, in February, 1930, the Company hastened to forestall a move by the Government against its failure to carry out the concession agreement by lodging its complaint with the Arbitration Court.

The Government agreed to submit to the decision of the Court its difficulties with the Company and on its side prepared the necessary materials for submission to the Court.

Neither of the two parties in their appeal to the Arbitration Court raised the question of the dissolution of the agreement. On the contrary, in accordance with the declaration of both parties, only questions dealing with the carrying out of the concession agreement were to be submitted.

Nevertheless, the Company, on the eve of the first meeting of the Arbitration Court, decided to give up the concession by recalling its foreign engineers and by withdrawing from the chief representatives the right to act on the Company's behalf in spite of the fact that in accordance with par. 86 of the agreement the concession could only be wound up by decision of the Arbitration Court.

By this action the concessionaires violated the agreement and deprived the Arbitration Court, which was to consider the questions of the best methods for working the concession, of its *raison d'être*. The materials which we submit here, while leaving out of consideration the questions under dispute, throw light on the course of the negotiations which preceded the appointment of the Arbitration Court, as well as on the conditions under which the Government considered it necessary to declare that the Arbitration Court is not competent to decide the questions which have arisen as a result of the changed situation in consequence of the Company's action. By its one-sided action after the appointment of the Arbitration Court and by ceasing to work the concession, its refusal to carry out the agreement, and its declaration that it had "finally decided not to resume the working of the concession" (*see* wire of the Lena Goldfields of April 29th, 1930, page 34) the Company has abrogated all justification of such a Court.

Letters and Telegrams

I

**The Failure to carry out the Concession Agreement by the Lena Goldfields Company, Limited.**

U.S.S.R. Moscow, December 15th, 1928.  
Supreme Economic Council. No. 1001374.  
Presidium. To the Head Office of the Lena Goldfields, Moscow, Staro-Konusheny, 32.

Since we have not yet received a reply to ours No. 98922, concerning the provision of capital for prospecting in the Altai, we deem it necessary, in accordance with paragraph 49 of the concession agreement, to draw your attention to paragraph 86, section 2, and to give you the first warning concerning the non-fulfilment by you of the provision of capital for prospecting in the Altai to the amount of 500,000 roubles before the 14—xi.—28, in accordance with paragraph 49 of the concession agreement.

Member of the Presidium of the Supreme Economic Council of the U.S.S.R.

(Signature).

Assistant Secretary of the Presidium.

(Signature).

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U.S.S.R. Moscow, April 17th, 1929.  
Supreme Economic Council. No. 1003697.  
Presidium. To the Head Office of the Lena Goldfields, Staro-Konusheny, 32.

In accordance with article 2, par. 86, of the concession agreement, the Presidium of the Supreme Economic Council sends you a second warning (the first warning was sent

15—xii.—28, No. 1001374) concerning the non-fulfilment of par. 49 of the concession agreement, providing for the supply of the necessary capital for carrying out prospecting operations in the Altai, amounting to a total sum of 500,000 roubles before the 14—xi.—28.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

Secretary of the Presidium.

(Signature).

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U.S.S.R. To the Head Office of the Lena  
Supreme Economic Council. Goldfields, Ltd., Moscow,  
3—x.—29. No. 1049, Moscow. 34 Arbat, Staro-  
Konusheny, 32.

In accordance with instructions issued by the Government of the U.S.S.R., the Supreme Economic Council is drawing the attention of the Company to the fact that the agreed deductions from the working of the Lena-Vitim concession have not been paid in accordance with par. 50-51 of the concession agreement, within the period specified in par. 61. In the year 1927-28 gold deductions have been withheld to a total sum of approximately 146,000 roubles owing to incorrect calculations by the Company; the latter having calculated on the basis of the parity price of gold instead of the actual price which the Company obtained for it. The agreed deductions for the year 1928-29 from the working of the Lena-Vitim concession have not been paid at all, although the share for the October-December quarter of 1928 was due for payment not later than March 31st, 1929, and the January-March quarter, 1929, should have been paid not later than June 30th, 1929. The Company has also not paid the agreed deductions for working the concessions in the Ural and Altai districts for October-December, 1928, and January-March, 1929, which were due for payment not later than March 31st, and June 30th, 1929.

The Presidium of the Supreme Economic Council considers these delays an infringement of the concession agreement and



sends to the Company the first written notice in accordance with par. 86, section 1.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

Secretary of the Presidium.

(Signature).

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U.S.S.R.  
Supreme Economic Council.  
1—xii.—29, No. 101038,  
Moscow.

To the Head Office of the Lena  
Goldfields, Ltd., Staro-  
Konusheny, 32.

On October 3rd, of this year, the Presidium of the Supreme Economic Council of the U.S.S.R. sent to the Company the first written notice concerning the non-fulfilment by the Company of its undertaking in connection with the payment of agreed deductions from the output of the Lena-Vitim, Ural and Altai enterprises. During the past two months the outstanding payments have not been made.

In view of this the Presidium of the Supreme Economic Council of the U.S.S.R., instructed by the Government of the U.S.S.R., sends you the second written notice in accordance with par. 86, section 1, of the concession agreement concerning the infringement by the Company of the concession agreement.

President of the Supreme Economic Council of the U.S.S.R.  
(Signature).

Secretary of the Presidium.

(Signature).

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U.S.S.R.  
Supreme Economic Council.  
Presidium.

Moscow, January 30th, 1930.  
No. 102079.  
To the Head Office of the Lena  
Goldfields, Ltd., Moscow, 34,  
Staro-Konusheny, 32.

In accordance with par. 42 of the concession agreement the Company undertook to smelt not less than 100,000 poods of copper in the Degtiar copper foundry during 1929.

The Supreme Economic Council possesses information that this undertaking of the Company has not been fulfilled in the year 1929.

The Supreme Economic Council of the U.S.S.R., instructed by the Government of the U.S.S.R., sends you the first protest in accordance with par. 86, section 3, against the non-fulfilment by the Company of its undertakings, as specified in par. 42.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

Secretary of the Presidium.

(Signature).

U.S.S.R.  
Supreme Economic Council.  
Presidium.

Moscow, January 30th, 1930.  
No. 102080.

To the Head Office of the Lena  
Goldfields Company, Ltd.,  
Staro-Konusheny, 32,  
Moscow, 34.

In accordance with par. 49, section 1, of the concession agreement, the Company has undertaken to assign at least 1,000,000 roubles for investigation and prospecting work in the Zmeinogorsk and Zyrian districts in the Altai, before January 1st, 1930. The Supreme Economic Council has information that this undertaking of the Company has not been carried out.

The Supreme Economic Council of the U.S.S.R., instructed by the Government, sends you the first notice in accordance with par. 86, section 2, concerning the non-fulfilment by the Company of its undertakings, as specified in par. 49, section 1.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

Assistant Secretary of the Presidium.

(Signature).

U.S.S.R.  
Supreme Economic Council.  
Presidium.

Moscow, January 30th, 1930.  
No. 102091.

To the Head Office of the Lena  
Goldfields Company, Ltd.,  
Moscow 34, Staro-Konusheny 32.

In accordance with par. 49, section 2, of the concession agreement the Company has undertaken to allocate at least 5,000,000 roubles for the construction of mines and works in the

Altai. The Supreme Economic Council possesses information that this undertaking of the Company has not been fulfilled.

The Supreme Economic Council of the U.S.S.R., instructed by the Government, sends you the first notice in accordance with par. 86, section 2, concerning the non-fulfilment in due time by the Company of its undertakings, as specified in par. 49, section 2, of the concession agreement.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

For the Presidium.

(Signature).

U.S.S.R.  
Supreme Economic Council.  
Presidium.

Moscow, January 30th, 1930.  
No. 102093.  
To the Head Office of the Lena  
Goldfields Company, Ltd.,  
Moscow 34, Staro-Konusheny 32.

In accordance with par. 39 of the concession agreement the Company has undertaken to obtain annually at least 400 poods of gold in the Lena-Vitim area.

From the information available at the Supreme Economic Council this undertaking was not carried out by the Company in 1929.

The Supreme Economic Council of the U.S.S.R., acting on the instruction of the Government, sends you the first protest in accordance with par. 86, section 3, concerning the non-fulfilment by the Company of its obligations, as specified in par. 39 of the concession agreement.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

Assistant Secretary of the Presidium.

(Signature).

U.S.S.R.  
Supreme Economic Council.  
Presidium.

Moscow, January 30th, 1930.  
No. 102094.  
To the Head Office of the Lena  
Goldfields Company, Ltd.

In accordance with par. 41 of the concession agreement the Company has undertaken to smelt in the year 1929 in the Gumishev copper foundry at last 80,000 poods of copper.

From the information available at the Supreme Economic Council this undertaking was not carried out by the Company.

The Supreme Economic Council of the U.S.S.R., acting on the instructions of the Government, sends you the first protest, in accordance with par. 86, section 3, concerning the non-fulfilment by the Company of its obligations, as specified in par. 41 of the concession agreement.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

Assistant Secretary of the Presidium.

(Signature).

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U.S.S.R.  
Supreme Economic Council.  
Presidium.

Moscow, February 28th, 1930.

No. 102791.

To the Head Office of the Lena  
Goldfields Company, Ltd.,  
Moscow 34, Staro-Konusheny 32.

Owing to the Company's failure to carry out the copper output programme in the Degtiar foundry for the year 1929, to the extent of 100,000 poods, in accordance with par. 42 of the concession agreement, the Presidium of the Supreme Economic Council of the U.S.S.R., as instructed by the Government, is sending a second protest in accordance with par. 86, section 3, of the concession agreement for the non-fulfilment by the Company of its undertakings as specified in par. 42.

Vice-President of the Supreme Economic Council.

(Signature).

Secretary of the Presidium of the Supreme Economic Council.

(Signature).

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U.S.S.R.  
Supreme Economic Council.  
Presidium.

Moscow, February 28th, 1930.

No. 102792.

To the Head Office of the Lena  
Goldfield Company, Ltd.,  
Moscow 34, Staro-Konusheny 32.

Owing to the non-fulfilment by the Company of the copper output programme in the year 1929 to the extent of 80,000 poods in the Gumishev foundry in accordance with par. 41 of the concession agreement, the Presidium of the Supreme

Economic Council of the U.S.S.R., as instructed by the Government, is sending a second protest in accordance with par. 86, section 3, for the failure of the Company to carry out its undertakings as specified in par. 42 of the concession agreement.

Vice-President of the Supreme Economic Council.

(Signature).

Secretary of the Presidium of the Supreme Economic Council.

(Signature).

U.S.S.R. Moscow, February 28th, 1930.  
Supreme Economic Council. To the Head Office of the Lena  
Presidium. Goldfields Company, Ltd.  
Moscow 34, Staro-Konusheny 32.

Owing to the non-fulfilment by the Company of the gold production programme to the extent of 400 poods of gold in the Lena-Vitim area in the year 1929, in accordance with par. 39 of the concession agreement, the Supreme Economic Council of the U.S.S.R., as instructed by the Government, is sending a second protest in accordance with par. 86, section 3, of the concession agreement for the non-fulfilment by the Company of its obligations, as specified in par. 39.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

Secretary of the Presidium of the Supreme Economic Council.

(Signature).

U.S.S.R. Moscow, April 5th, 1930.  
Supreme Economic Council. No. 103596.  
Presidium. To the Lena Goldfields Company,  
Ltd., Moscow 34,  
Staro-Konusheny 32.

From the information available at the Supreme Economic Council concerning the non-fulfilment by the Company of par. 49, section 1, of the concession agreement, to provide at least 1,000,000 roubles before January 1st, 1930, for investigation and prospecting purposes, the Supreme Economic Council, acting on the instructions of the Government, is sending you

a second notice in accordance with par. 86, section 2, of the concession agreement, for non-fulfilment in due time by the Company of its undertakings as specified in par. 49, section 1.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

Assistant Secretary of the Presidium.

(Signature).

U.S.S.R.  
Supreme Economic Council.  
Presidium.

Moscow, April 5th, 1930.  
No. 103597.

To the Head Office of the Lena  
Goldfields Company, Ltd., Moscow,  
Staro-Konusheny 32.

In view of the fact that the Company after receipt of the first notice from the Government, dated January 30th, 1930, No. 102091, containing a protest against the non-fulfilment of its obligation to allocate 5,000,000 roubles for the construction of mines and works in the Altai before January 1st, 1930, merely confined itself to a reply that it intends to invest more than this amount, the Supreme Economic Council, as instructed by the Government, is sending a second protest in accordance with par. 86, number 2, against the non-fulfilment of the Company's undertaking, as specified in par. 49, section 2, of the concession agreement.

Vice-President of the Supreme Economic Council of the U.S.S.R.

(Signature).

Assistant Secretary of the Presidium.

(Signature).

## II

### Negotiations for a Friendly Settlement.

THE LENA GOLDFIELDS, LIMITED,  
MOSCOW OFFICE.

Postal Address :

Staro-Konusheny pereulok No. 32,  
Moscow 34.

March 7th, 1930.

No. 80.

To the Chief Concessions Committee  
of the U.S.S.R., Moscow.

Dear Sirs,

In pursuance of our conversation with you yesterday, we beg to advise you as follows :

In consequence of conditions which the Company has been subjected to in its operations under the concession agreement, and the question of responsibility for which has been submitted to the Court of Arbitration provided for in the concession agreement, the Company cannot continue to operate.

In view of this, and of the importance to the Government, as well as to the Company, of protecting the concession properties and enterprise pending a settlement between the Government and the Company, either by arbitration as contemplated by the concession agreement or by negotiations, the Board of the Company cabled you under the date of February 21st, 1930, suggesting that the Government take over the concession in trust for the purpose of protecting the properties and the enterprise pending such settlement.

We made substantially the same proposal again yesterday and we wish to repeat it again here, believing that we can fully demonstrate to the Government the desirability from its standpoint of following this course.

You asked us in our conversation yesterday what we meant by taking over the concession in trust. We are glad



to clear up any misunderstanding of our proposal in that connection. We meant only that the Government should take over the concession, pending a settlement between Lena and the Government, and operate the enterprise to such extent as the Government might determine and which should be necessary to preserve the enterprise and avoid any losses to the enterprise involved in closing down. Such taking over would quite naturally be subject to the condition that it should not be interpreted as any surrender or abandonment or final sale by the Company of the concession properties and enterprise.

If the Arbitration Court should decide or if it should be otherwise agreed that the Company should continue to work in the U.S.S.R., the Government would hand back the concession on such date and subject to such conditions as the Court might think appropriate or as should be agreed upon, including of course proper reimbursement of any expenses over receipts incurred by the Government. If on the other hand the Arbitration Court should decide or if it should be otherwise agreed that the concession should be cancelled with appropriate compensation, then the Government would of course keep the concession properties and enterprise, and would be in a position to continue the operations in such manner as it determined without being subject to the expenses and delay which closing down would have necessarily entailed.

Presumably separate accounts of operations pending such settlement could be kept by the Government and the interests of the Company satisfactorily looked after by a representative or representatives of the Company being permitted to cooperate in the management and examine such accounts. These are details which could be worked out, and any differences which might arise would be subject to being placed before the Arbitration Court under the concession agreement if such differences could not be otherwise settled by agreement.

If it should be impossible for the Government to accept the above proposal, a second alternative is that the Government give the necessary assistance to permit the Company to continue operations to such an extent as shall be necessary to protect the concession properties and enterprise pending a settlement.

If neither of the two foregoing alternatives is acceptable to the Government, then there is only one other course, namely, for the Company to close down immediately. The Company has already informed the Government of this alternative and



we regret that there is absolutely no other way if one of the first two alternatives is not accepted immediately. In such event it is recognised that the whole record will have to be placed before the Arbitration Court for decision.

We place ourselves at your disposal to work out these matters and with assurances of respect, we beg to remain,

Faithfully yours,

LENA GOLDFIELDS, LTD.,  
HERBERT GUEDALLA,  
*Chairman.*

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THE LENA GOLDFIELDS, LIMITED,  
MOSCOW OFFICE.

Postal Address :  
Staro-Konusheny pereulok No. 32,  
Moscow, 34.

March 7th, 1930.

No. 78.

To the Chief Concessions Committee  
of the U.S.S.R., Moscow.

Dear Sirs,

We beg to refer to our telegram to the Government dated February 12th, 1930, submitting certain questions to arbitration and to the Government's telegram in reply thereto dated February 25th, 1930, and to the exchange of views between yourselves and our representatives to-day with reference to the possibility of reaching a settlement by friendly negotiations.

We confirm that we are prepared, if the Government so desires, to enter into such negotiations. To this end we respectfully propose that the Government appoint a Commission to meet as soon as possible a Commission representing the Company and those interested in it at Paris or Berlin.

It is of course understood that any such negotiations are without prejudice to the arbitration proceedings and that preparations for such arbitration shall go forward as contemplated by the concession agreement.

Yours faithfully,

LENA GOLDFIELDS, LTD.,  
HERBERT GUEDALLA,  
*Chairman.*

Moscow, March 13th, 1930.  
No. 1455586.

To the Lena Goldfields Company, Ltd. Moscow.

In reply to your proposition contained in your letter of March 7th, No. 78, signed by the Chairman of the Board of Directors, Mr. Herbert Guedalla, concerning the settlement of the point in dispute by negotiations, I have the honour to inform you that the Government of the U.S.S.R. considers this proposition acceptable and expresses its willingness to appoint its representative, which it will do as soon as you have informed the Government of the names of the people you have appointed to act for you.

The deliberations of this Commission need in no way interfere with the preparations for the meeting of the Arbitration Court as foreseen in the concession agreement.

The Government agrees to the choice of Berlin as the seat for deliberations.

Chairman of the Central Concessions Committee of the Council of People's Commissaries of the U.S.S.R.—KAMENEV.

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Moscow, March 13th, 1930.  
No. 1455589.

To the Lena Goldfields Company, Ltd. Moscow.

In reply to your proposition contained in your letter of March 7th, No. 80, signed by the Chairman of the Board of Directors, Mr. Herbert Guedalla, I have the honour to inform you that the Government of the U.S.S.R. considers it impossible to accept the said proposition of taking over provisionally the working of the Lena Goldfields until the Arbitration Court has pronounced itself with regard to the questions at issue ; nor is the Government ready to grant a supplementary credit to the Lena Goldfields Company.

Chairman of the Central Concessions Committee of the Council of People's Commissaries of the U.S.S.R.—KAMENEV.

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London, March 21st, 1930.

Chairman Glavconcesskom, Moscow.

Regret unable agree Professor Einstein as Superarbitrator but should be glad to consider if you would submit other names. With regard negotiations prepared start Monday thirty-first in Berlin kindly cable if your Commission could meet at that date.—CHAIRMAN, LENGOLFI.

*Telegram.*

Moscow, March 26th, 1930.

London, Lengolfi.

In reply to your proposition I inform you that the Commission appointed to negotiate with Lena Goldfields is prepared to meet you in Berlin on April 1st. The address of the Commission is Trade Delegation, Central Concessions Committee.—KAMENEV.

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*Telegram.*

Moscow, March 30th, 1930.

London, Lengolfi.

I have been appointed by the Central Concessions Committee as Chairman of the Soviet group of negotiators for the deliberations in Berlin. Regret cannot come to Berlin before April 4th. Please confirm. Central Concessions Committee.—KSANDROV, No. 44555108.

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*Telegram.*

London, March 31st, 1930.

Ksandrov Glavconcesskom, Moscow.

Note your appointment chairman your Commission for negotiations and regret your health prevents meeting Berlin until fourth April. As previously arranged our representatives already left and will await your arrival.—LENGOLFI.

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*Telegram.*

London, March 31st, 1930.

Kamenev Glavkoncesskom, Moscow.

Moscow telegraphs that fine 10,000 roubles imposed March twenty-eighth on local manager Bodaibo and further Zvetmet have issued writ execution for 104,000 roubles in spite Company's offer complete deliveries balance copper contract. Our Commission distinctly understood that pending negotiations no hostile actions of this character would be taken and we must strongly protest against same. Therefore request you do utmost assist situation as otherwise most difficult adhere friendly negotiations which naturally require utmost goodwill both sides.—GUEDALLA, LENGOLFI.

*Telegram.*

Moscow, April 30th, 1930.

Lena, London.

I protest most energetically against your assertion that my Commission agreed that the *modus vivendi* should be decided by the Arbitration Court on May 9th. I declare categorically that such an arrangement does not exist.—KSANDROV.

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London, May 1st, 1930.

Ksandrov Glavkoncesskom, Moscow.

Our Commission understood it was distinctly agreed that arrangement about *modus vivendi* in default of you and our agreeing be submitted arbitration court however on our Commission's advice the board agrees raise question *modus vivendi* purely on the facts of the situation without reference deliberations Commission but something must be done as, owing to actions and unfounded accusations against Company and its employees in pursuance of Government's attitude of which we complain and about which we seek redress, Government must henceforth pending the award be responsible for carrying on concession and we are acting accordingly. If Government persists refuse make some reasonable plan we intend laying facts before Tribunal next week.—GWYNNE.

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*Telegram.*

Berlin, May 14th, 1930.

Lengolfi, London.

In accordance with the deliberations in Berlin I inform you. Friendly deliberations only possible by your formal renunciation of the incompetent and invalid Court. Convinced that friendly negotiations concerning the settlement in connection with the winding up of the Concession will be successfully completed. In cases of dispute new Arbitration Court to be appointed in accordance with the agreement. In future please address yourself to the Central Concessions Committee. Chairman of the Commission of the Central Concessions Committee.—KSANDROV.

*Telegram.*

London, May 14th, 1930.

Kamenev Glavkoncessskom, Moscow.

Understand you are officially informed that arbitration court declared itself competent and proceeds. Nevertheless confirming our Commission's suggestion we declare that we willing arrive friendly settlement by procedure suggested in Berlin any time previous award by court. In light our experience this arbitration we unable to agree create new arbitration courts as this court competent deal with all questions between us.—GUEDALLA, Chairman Lena Goldfields.

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*Telegram.*

Moscow, May 22nd, 1930.

London, Lengolfi.

In reply to your telegram of May 14th, we inform you that the attitude of the Concessions Committee to the Arbitration Court and to the friendly negotiations was fully stated in the telegram of May 5th, and in that one sent by the Chairman of our Commission, Ksandrov, on the 14th. In these telegrams it was clearly shown that the Government considers it proved that the concessionaire by his one-sided action infringed par. 86 of the agreement actually and formally, thus refusing to carry out the concession agreement. The concessionaire has thus deprived the Arbitration Court, which was appointed by both parties for deciding the questions in connection with carrying out the agreement, of its *raison d'etre*. In the same telegrams it was stated that the Government is always ready to continue the negotiations in connection with the winding up of the Concession and is convinced that it is possible to come to a friendly arrangement. This will, however, only be possible if you will formally renounce the Arbitration Court, which has now lost its validity and lawful basis, considering that it was appointed for the settlement of quite different questions. We note with regret that in your telegram of May 14th you insist on the rightfulness of the now invalid Arbitration Court as a condition for friendly negotiations. This proves reluctance on your part of continuing negotiations. We again declare our willingness to continue the friendly negotiations as soon as the above-named obstacle has been removed by you.—No. 14855, Central Concessions Committee.—  
KAMENEV.

### III

#### Arbitration Court.

*Telegram.*

London, February 12th, 1930.

Government of the U.S.S.R., The Supreme Economic Council  
(V.S.N.H.), Moscow.

Lena Goldfields Company, Limited, London, hereby gives notice under Concession Agreement dated fourteenth November nineteen twenty five article ninety that it summons to the Court of Arbitration thereunder the Government and refers to Court of Arbitration the questions and disputes hereinafter mentioned and nominates as its arbitrator the Right Honourable Sir Leslie Scott Privy Councillor Kings Counsel formerly Solicitor General. Lena Goldfields will submit to arbitration whether or no the recent changes of legislation and economic policy and administrative practice and the attitude of the Government have created for Lena Goldfields undue difficulties and interference and in fact the impossibility as regards performing its part of the Concession Agreement and what compensation is due to Lena Goldfields from the Government for preventing the Company carrying out the Concession Agreement or enjoying the rights privileges and benefits thereby created and further whether or no the Government has infringed various articles of the Concession Agreement and if so what is the amount of compensation to be paid by the Government to Lena Goldfields. Lena Goldfields will respectfully refer to the Court of Arbitration without excluding other important articles and schedules the following articles : one two four five eight seventeen eighteen twenty-three twenty-nine thirty-five sixty-eight sixty-nine seventy-one seventy-six seventy-seven seventy-eight seventy-nine eighty eighty-nine and ninety-two. Lena Goldfields expects to hear from the Government as to the arbitrator to be appointed by them so that the arbitration should proceed with the utmost

expedition. Upon notification of the Government's arbitrator Lena Goldfields is prepared to consider with the Government the election of a super-arbitrator by mutual agreement as contemplated. By order of the board of directors Herbert Guedalla Chairman Lena Goldfields Limited four London Wall Buildings London.

*Telegram.*

Moscow, February 25th, 1930.

London, Lena Goldfields, Ltd.

In reply to your telegram of February 12th summoning us to the Arbitration Court, we inform you that the Government is ready to submit to the Arbitration Court its replies to your complaint and appoints citizen S. B. Chlenov. The Government on its side submits to the Court, firstly, the question of non-payment by the Lena Goldfields of the agreed deductions and other accounts; secondly, the question of the non-fulfilment by the Company of the production programme, as well as the construction programme for the construction of factories, mines and the sinking of shafts in accordance with the agreement. The Government also claims compensation for the loss sustained on account of this non-fulfilment; thirdly, the question of the amount to be paid by Lena Goldfields to the Government of the U.S.S.R. for the neglectful manner in which it conducted its business, since it resulted in loss to the national economy of the U.S.S.R. and infringed the agreement. The above-named complaints refer to the infringement by the Lena Goldfields of the following articles of the concessionary agreement: 14, 31, 37, 38, 39, 40, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 66, 68, 69, 75, 92, and the paragraphs 8 and 10 of the appendix No. 7 to the concession agreement. We shall submit to the Arbitration Court a complete list of the failures of the Lena Goldfields to meet its obligations under the concession agreement at a later date. We are also compelled to point out that your telegram, while it contains an enumeration of articles from the concession agreement, contains no definite indication which action of the Government could be cited as an infringement of these. In accordance with par. 90 of the agreement the complaining party must submit a detailed account of all the breaches. Our representative at the Arbitration Court will in accordance with article 90 of the agreement together with your arbitrator consider the question of

the selection of a Chairman. In connection with your telegram of February 21st received by us, proposing to take over the property of the Lena Goldfields, we inform you that this offer we decline emphatically. We draw your attention to the fact that we consider the concessionaire responsible also in the future for the continuation of the work on the concession enterprise and for carrying out the obligations which he has undertaken in accordance with the agreement. We assert that the agreement must be carried out by both parties also in the future. With regard to the question raised orally by Mr. Sampson, your representative in Moscow, about the friendly settlement of the complaint submitted by you to the Arbitration Court, we deem it necessary to explain that before we receive a written statement to this effect from the headquarters of your Company, we are unable to accept this proposal. No. 1455570, Central Concessions Committee.—KAMENEV.

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*Telegram.*

Moscow, March 1st, 1930.

London, Lena Goldfields.

In addition to the list of articles infringed by the Lena Goldfields which we submitted in our telegram of February 25th, we inform you that we have also submitted to the Arbitration Court the infringement of the following paragraphs of the concession agreement: 41, 44, 65, 67, 72, 73, 82, and the paragraphs 7, 13, 14 of the appendix No. 7. We maintain our right to submit to the Arbitration Court also a list of other infringed paragraphs of the concession agreement, and of the Appendices, so far unnamed. Central Concessions Committee.—KAMENEV.

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*Telegram.*

Moscow, March 3rd, 1930.

London, Lena Goldfields.

Referring to our telegram of February 25th, we request you, in the interest of both parties, to hasten the proceedings of the Arbitration Court by submitting your complaints in accordance with par. 90, section 3, and by indicating the address of your arbitrator as soon as possible. Central Concessions Committee.—KAMENEV.



*Telegram.*

Moscow, March 17th, 1930.

The Board of Directors, Lena Goldfields  
Company, Moscow.

The Central Concessions Committee having considered your proposal concerning the appointment of Mr. Loefgren or Mr. Borel as Chairman of the Arbitration Court, informs you that the Government of the U.S.S.R. cannot agree to the appointment of either of these gentlemen as Chairman of the Arbitration Court and proposes Prof. Einstein (Germany) as Chairman of the Arbitration Court. Chairman of Central Commissions Committee of the Council of People's Commissaries of the U.S.S.R.—KAMENEV.

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THE LENA GOLDFIELDS, LIMITED,  
MOSCOW OFFICE.

Postal Address :  
Staro-Konusheny pereulok No. 32,  
Moscow 34.

March 18th, 1930.

No. 84.

To the Chief Concessions Committee,  
M. Dmitrovka, 18, Moscow.

Dear Sirs,

We have to acknowledge your letter of March 17th and note that you cannot agree to the election of M. Loefgren or M. Borel as Super-Arbitrator. On the other hand we note your proposal to nominate Professor Einstein (Germany), who, we understand, is the gentleman identified with the new theory of relativity. The Commission is returning to London to-night and on arrival will at once take up this matter and telegraph you as to whether this nomination will be mutually agreeable.

Yours faithfully,

LENA GOLDFIELDS, LIMITED,  
HERBERT GUEDALLA,  
*Chairman.*

*Telegram.*

Moscow, March 26th, 1930.

London, Lengolfi.

In accordance with par. 90 of the concession agreement we supply you the list of the six Professors of the Mining Academy in Freiberg (Saxony) : Prof. Ch. Madel, Prof. Doctor Ingenieur Ed. Maurer, Prof. Doctor Ingenieur A. Ohnesorge, Prof. Doctor Ingenieur P. Rosien, Prof. Stutzer, Prof. Schuhmacher. Please inform us who of the professors named you agree to elect as Chairman of the Arbitration Court. No. 14555101, Central Concessions Committee.—KAMENEV.

*Telegram.*

London, March 26th, 1930.

Glavkoncesskom Kamenev, Moscow.

Beg acknowledge your 14555101, and will reply next few days.—LENGOLFI, GUEDALLA.

*Telegram.*

London, April 7th, 1930.

Kamenev Glavkoncesskom, Moscow.

Referring your number 14555101 Lena Goldfields elects Professor Stutzer Silbermanstrasse, one, Freiberg to act as super-arbitrator.—GUEDALLA, LENGOLFI.

*Telegram.*

Moscow, April 20th, 1930.

No. 14555/1524.

To the Lena Goldfields Company, London.

The Central Concessions Committee confirms receipt of your telegram of April 7th. and your letter of same date in which the Central Concessions Committee is informed that you have elected Prof. Stutzer of the Freiberg Mining Academy as Chairman of the Arbitration Court.

The Central Concessions Committee affirms that both parties will be in a position to inform Prof. Stutzer of the state of affairs after having fully discussed the points at issue.

Chairman of the Central Concessions Committee of the Council of People's Commissaries of the U.S.S.R.—KAMENEV.

*Telegram.*

Moscow, May 5th, 1930.

Freiberg, Saxony, Annabergstrasse 19,  
Prof. Stutzer.

Lena Goldfields Limited addressed itself to the Central Concessions Committee on February 12th with the statement that as a result of differences of opinion in connection with the carrying out of the concession agreement the Company, in accordance with par. 90, requests the appointment of an Arbitration Court to consider the questions mentioned in the above telegram and that the Lena Goldfields appoints Sir Leslie Scott as its arbitrator. The Central Concessions Committee consented in its telegram of February 25th to submit the questions raised by the Lena Goldfields to the Arbitration Court and on its side indicated various points in connection with the carrying out of the concession agreement, which it desired to submit to the Arbitration Court, and appointed Mr. Chlenov as its arbitrator. After being unable to reach an agreement on the question of appointing a Chairman of the Arbitration Court, the Central Concessions Committee, in accordance with par. 90 of the agreement, named six candidates from among the professors of the Freiberg Mining Academy, of whom Lena Goldfields elected you Chairman. The Central Concessions Committee immediately agreed to your election. Both parties requested you to fix the first meeting of the Arbitration Court in Berlin for May 9th. In this manner everything was done to settle the differences by an Arbitration Court in accordance with par. 90. We have to inform you that on April 29th we received a declaration from the Lena Goldfields that they have finally decided that it is "not only impossible to perform the concession agreement under existing conditions, but also that resumption of work, even if certain conditions discussed by Commission were altered, has now become entirely impossible. That no one except Government can protect properties, and that any damage to concession property in U.S.S.R. from now cannot be responsibility of Lena Goldfields because the undertaking in the U.S.S.R. can no longer be controlled from London." On May 1st, Lena Goldfields informed us that they have cancelled the powers of attorney and gave instructions to all their foreign employees to return abroad. This one-sided action of the Lena Goldfields, which is particularly intolerable in view of agreement reached by both parties to appoint an Arbitration Court for the settlement of the various differences in connection

with the carrying out of the agreement, creates an entirely new situation. We have consequently to-day wired to Lena Goldfields the following: "Your telegrams of April 29th and May 1st came to us as a complete surprise, the more so as they were sent only a few days before the meeting of the Arbitration Court, appointed by both parties for the settlement of questions in connection with the management of the concession, and which we hoped would solve all differences. We regret that you have abandoned the course agreed to by both parties, which would have made it possible to manage the concession on the basis of the concession agreement. On the other hand, by your declaration that you decline responsibility, stop financing, cancel the powers of attorney, and recall your representatives and technical staff, you have *de jure* and *de facto* ceased to carry out the concession agreement. By this action you have one-sidedly and unlawfully dissolved the agreement in defiance of paragraph 86, in accordance with which the concession could only be wound up by the decision of an Arbitration Court. Such one-sided action places the concession enterprises in a very difficult position and you must take full responsibility for the consequences of your action. Under these circumstances the Arbitration Court appointed by both parties for the settlement of the differences in connection with the carrying out of the agreement ceases to function, of which fact we inform the Chairman of the Court. We are convinced that by mutual goodwill we could come to a satisfactory arrangement on all points arising from the winding up of the concession without the assistance of an Arbitration Court. Should disagreements arise during these negotiations we shall naturally appoint a new Arbitration Court in accordance with the concession agreement, for the settlement of these. For the regulation of the order and manner in connection with the settlement of mutual indemnities arising from the liquidation of the concession, our Commission will meet yours on May 7th, in accordance with the arrangements of April 7th." In conformity with this we beg to inform you that we consider the functions of the Arbitration Court, summoned for the settling of questions in connection with the working of the concession and the carrying out of the agreement and of which you are the Chairman, at an end. We have ordered our representative, M. Chlenov, to return, since the concession agreement has ceased to exist, owing to the one-sided action of the concessionaires, who have stopped working the enter-

prises and refuse to carry out the agreement in the future. While we express to you our thanks, we request you to accept our apologies for the trouble we have given you. We have instructed the Chairman of our Commission, M. Ksandrov, who will visit you, to settle with you the question of costs.

Chairman of the Central Concessions Committee.—  
KAMENEV.

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*Telegram.*

London, May 6th, 1930.

Kamenev Glavkoncesskom, Moscow.

Yours fifth received to-day. Arbitral tribunal properly and completely constituted and as summoned by super-arbitrator Sir Leslie Scott leaves London to-morrow and will attend first session as appointed Adlon Hotel Berlin Friday morning. This appointment was made at joint request our respective representatives and even if Doctor Tchlenov did not attend Court would still be effectively constituted. We shall request Court proceed with session in any event. Our chief contention is that U.S.S.R. having failed and refused to perform and to continue to perform its obligations under Concession Agreement we were and are exonerated from any further performance and we shall ask arbitral tribunal to treat our concession as at end except for Company's right damages consequential on governmental breaches and renunciation. For this reason we have asked and still ask you take over properties on trust on terms to be agreed pending arbitral award otherwise as repeatedly stated we treat concession as having been brought to an end by Russian Government's conduct. We always agreeable continue discussions and negotiations without prejudice to see whether we can adjust our claims amicably but arbitration must proceed. Of course we accept responsibility withdrawing foreign employees and cancelling powers attorney. Our Commission will be Kaiserhof Berlin Thursday morning as arranged.—  
GUEDALLA, LENGOLFI.

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*Telegram.*

Freiberg, Saxony, May 7th, 1930.

Central Concessions Committee Supreme Economic Council,  
Moscow, Kamenev.

The first meeting of the Arbitration Court can be cancelled

only by wish of both parties. The English representative leaves to-day for Berlin. My request that your representative should come.—STUTZER.

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*Telegram.*

Moscow, May 8th, 1930.

Professor Stutzer,  
Freiberg, Saxony, Annabergstrasse, 19.  
Berlin, Adlon Hotel.

Considering that the concession agreement has been dissolved by the one-sided action of the Lena Goldfields, in obvious disregard of the definite meaning of par. 86, according to which the "concession can only be dissolved before the expiration of the term by decision of an Arbitration Court," the lawful basis for the Arbitration Court which was appointed for the settlement of differences arising in connection with the carrying out of the concession agreement, has thus disappeared. We confirm the recall of our representative, Mr. Chlenov, in accordance with our telegram of the 5th inst.

Chairman of the Central Concessions Committee.—  
KAMENEV.

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*Telegram.*

*Communique from the Tass Agency.*

Moscow, May 10th, 1930.

In spite of the categorical declarations of the Central Concessions Committee in their telegrams on May 5th, addressed to the Lena Goldfields and to Prof. Stutzer, the Soviet Government declares that the activity of the Arbitration Court which was convoked by mutual consent of both parties to examine points of difference in connection with the carrying out of the concessions agreement, has lost its validity owing to the one-sided and unlawful action of the Lena Goldfields, which violated par. 86 of the agreement. Notwithstanding these declarations and the fact that the Soviet group recalled its arbitrator, Prof. Stutzer, and the representative of Lena Goldfields met and considered it possible to declare themselves an Arbitration Court and passed a series of resolutions concerning the future conduct of the case. The Soviet Government maintains now as heretofore that the conversations and decisions of the two gentlemen are of no consequence and

have no binding power. In conformity with what the Soviet Government maintained in its telegram of May 5th to the concessionaire, it asserts that the Arbitration Court, which was appointed to consider the various questions in dispute, is no longer valid. A settlement in connection with the liquidation of accounts, which became necessary owing to the one-sided action of the concessionaire in giving up the concession, can be arranged by friendly negotiations. Should no agreement be reached this question is to be submitted to a new Arbitration Court for a decision. The Soviet Government cannot however tolerate that an Arbitration Court, where it is not represented and which it does not recognise, should meet at the same time that the Government is conducting friendly negotiations.

## IV

### The Abandonment of the Concession by the Lena Goldfields Co., Ltd., contrary to the Agreement.

*Telegram.*

London, February 21st, 1930.

Chairman Glavkoncesskom, Moscow.

Pending arbitration it is necessary in interests all parties arrange complete suspension Lenas business in U.S.S.R. As our organisation in U.S.S.R. is entirely dislocated by recent measures, necessary arrangements for this purpose can be achieved only by Government. We do not of course surrender concession but pending arbitration award must withdraw leaving all property of Lena in trust of the Government.—CHAIRMAN LENA GOLDFIELDS.

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*Telegram.*

London, April 29th, 1930.

Glavkoncesskom, Moscow.

Our Commission arranged with yours last Saturday that *modus vivendi* for transition period failing agreement by parties will be fixed by arbitration court on ninth May. Since then we received disturbing news about our properties but still we think that at this stage of friendly negotiations it is preferable to approach the Arbitration Court with an agreed scheme and we on our part suggest not only for preservation properties but also in the interest of all parties concerned that Government should immediately take charge of all properties leaving the Moscow office to arrange for departure of all foreign employees. Our Commission declared to yours last Friday that our Company has now finally decided that not



only Concession Agreement impossible to perform under existing conditions but also that resumption of work even if certain conditions discussed by Commission were altered has now become entirely impossible. No one except Government can protect properties. We beg point out that any damage concession property in U.S.S.R. from now cannot be our responsibility because as we already declared our undertaking in U.S.S.R. cannot any more be controlled from here.—  
LENGOLFI.

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*Telegram.*

London, May 1st, 1930.

Glavkoncesskom, Moscow.

Having received from you no reply our telegram 29th April have cancelled powers of attorney and instructed all our foreign employees return abroad. Government's attitude to our Company precludes our sending anyone to Moscow.—  
LENA GOLDFIELDS.

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*Telegram.*

Moscow, May 5th, 1930.

London, Lengolfi.

Your telegrams of April 29th and May 1st came to us as a complete surprise, the more so, as they were sent only a few days before the meeting of the Arbitration Court, appointed by both parties for the settlement of questions in connection with the management of the concession and which we hoped would solve all differences. We regret that you have abandoned the course agreed to by both parties which would have made it possible to manage the concession on the basis of the concession agreement. On the other hand, by your declaration that you decline responsibility, stop financing, cancel the powers of attorney and recall your representatives and technical staff, you have *de jure* and *de facto* ceased to carry out the concessions agreement. By this action you have one-sidedly and unlawfully dissolved the agreement in defiance of par. 86, in accordance with which the concession could only be wound up by the decision of an Arbitration Court. Such one-sided action places the concession enterprises in a very difficult position and you assume full responsibility for the consequences of your action. Under these circumstances the Arbitration Court appointed by both parties

for the settlement of the differences in connection with the carrying out of the agreement ceases to function, of which fact we inform the chairman of the Court. We are convinced that by mutual goodwill we could come to a satisfactory arrangement on all points arising from the winding up of the concession without the assistance of an Arbitration Court. Should disagreement arise during these negotiations we shall naturally appoint a new Arbitration Court, in accordance with the concession agreement, for the settlement of these. For the regulation of the order and procedure in connection with the settlement of mutual indemnities arising from the liquidation of the concession, our Commission will meet yours on May 7th, in accordance with the arrangements of April 7th.

Central Concessions Committee.—KAMENEV.

*Telegram.*

The Head Office Lena Goldfields, Ltd., U.S.S.R.,  
May 21st, 1930. No. 3914,  
Staro-Konusheny 32, Moscow 34.

To :

1. The Central Committee of the Metal Workers' Trade Union.
2. Central Committee of the Building Workers' Trade Union.
3. Central Committee of the Mining Workers' Trade Union.

In reply to your letter of May 20th, No. 226/901, I inform you that I have been appointed to act temporarily in place of Mr. G. J. Sampson, the representative of the Administration Board, during his absence on leave for three weeks.

However, after the expiration of his leave, the representative of the Administration Board did not return and on my repeated inquiries, I was informed by the Board that no director or representative will proceed to Moscow. At the same time the Board deprived all its employees in the U.S.S.R. of the powers of attorney, as result of which the business of the Company became paralysed and all the enterprises were placed in a precarious position.

My categorical demands addressed to the Board to send the sums necessary for settling the workers' accounts remained unheeded.

As a result the Central Administration was left without

the necessary resources for payment of the workers' wage, while the available resources, though insufficient to cover the total indebtedness to the workers, could not be utilised in spite of my insistent requests addressed to the State Bank, owing to the absence of powers of attorney.

Owing to these circumstances I found myself in a very difficult position being entirely unable to do anything for the settlement of the workers' pay, or even to effect partial payment from the resources available.

In addition to this my powers of attorney have been limited from May 2nd exclusively to activities in connection with the recall of our foreign employees.

In bringing this to your notice, I request you, at the same time, that all amounts which are standing to the Company's account at the State Bank should be taken over by you in partial settlement of our indebtedness.

Head Office of the Lena Goldfields, Ltd., in the U.S.S.R.—  
A. A. CUNNINGHAM.

Extracts from the  
Concession Agreement

BETWEEN

The U. S. S. R. and  
The Lena Goldfields Co., Ltd.

## General Conditions and Mutual Guarantees.

### *Paragraph 75.*

Where no provision is made in the present agreement for particular circumstances the Lena Goldfields Company shall be subject to the existing legal code and to future enactments and ordinances of the Government of the U.S.S.R. In particular the Lena Goldfields shall be subject to :

- (1) the general regulation regarding production in metallurgical works ;
- (2) the general regulations in regard to forest husbandry, the felling of timber, the protection of trees ;
- (3) the general regulations for the equipment and exploitation of hydro-electric stations.

### *Paragraph 76.*

The Government pledges itself to make no changes in the said agreement during the term of its validity, nor to alter it in any way by disposition, decree or other unilateral acts of the State authorities.

Any change in the terms of the present agreement shall only be made by the mutual consent of both parties.

### *Paragraph 80.*

The Government is entitled to recover from the Lena Goldfields Company any losses resulting from the infringement of the concession agreement and to demand the cessation of infringement thereof. The Government shall compensate the Lena Goldfields Company for any losses to the Company resulting from the infringement of the concession agreement by the bodies of the central or local authority. Moreover, the Lena Goldfields Company shall be entitled to demand cessation or discontinuance of the aforesaid infringement of rights.

### *Paragraph 82.*

The two parties agree that when one of them is unable to discharge its liability to pay a certain sum of money or to deliver raw materials, in accordance with the terms of the present agreement, or as laid down by the Arbitration Court,

then the party which has failed to meet its liabilities in full, or in part, shall pay interest at the rate of 1% (one per cent.) per month on the amount so unpaid. Should payment of sums so owing, or of dues, not be made by one or other of the contracting parties for a period of over 6 (six) months, the matter shall be referred to the Arbitration Court for decision. If, upon examination, the Lena Goldfields Company is found to be in default the Arbitration Court is entitled to impose a penalty on the Company or even to annul the agreement, if such be the request of the Government, and if the U.S.S.R. is found to be in default the Arbitration Court shall authorise the Lena Goldfields Company to cease the payment of dues or of raw materials and other payments until the amount owing with accumulated interest (as laid down in this article) shall be completely discharged.

*Paragraph 83.*

Should one of the contracting parties be unable to discharge the liabilities it has assumed under this agreement owing to conditions for which it is not responsible (*force majeure*), such contracting party shall either be absolved from the discharge of one or other of its different liabilities under this agreement, or it shall be entitled to postpone the discharge of a given liability during the period in which the insuperable forces prevail.

Should the two parties disagree on the question of the prevalence of insuperable difficulties, or on their effect on the fulfilment of the present agreement, the matter shall be settled by the Arbitration Court as laid down in Article 90 of this agreement.

*Paragraph 85.*

At the termination of the concession the enterprises of the Lena Goldfields Company with all plant, equipment existing materials, stores and semi-products shall be transferred free of charge to the Government in a form and condition permitting production to proceed uninterruptedly, the productive capacity at the time being no less than the average annual capacity for the previous 10 (ten) years. Finished products, cash capital and the Company's claims on third parties shall not be alienated from the Lena Goldfields Company. The enterprise in the Lena-Vitim region shall be supplied with stores sufficient to carry on the business until the next

season of supply. All enterprises transferred at the termination of the concession shall be free of debt or other claims on them of third parties.

The Government undertakes to compensate the Lena Goldfields Company for unredeemed portions of the costs of buildings and improvements and also for the cost of prospecting and preliminary works which it has carried out on the concession enterprises during the last 5 (five) years of the concessionary period, providing that the said works have been carried out with the approval of the Government. The amount of amortization for the purpose of this article is fixed at not less than 5% (five per cent.) for stone buildings and not less than 10% (ten per cent.) for wooden structures and equipment annually.

*Paragraph 86.*

The concession shall only be terminated before its time by a decision of the Arbitration Court.

The Government is entitled to terminate the concession before the stipulated time if, on informing the arbitration Court of its intention, the latter establishes :

- (1) that the Lena Goldfields Company was guilty of omission to make due payments at the proper time, in accordance with paragraphs 50 and 61 respecting business discounts, and that the Company had failed to discharge the said payments in full within 4 (four) months after receipt of two written reminders during an interval of 2 (two) months, or
- (2) that the Lena Goldfields Company was guilty of omission to make the necessary expenditure in development schemes at the proper time, as laid down in paragraphs 38, 40, 47, 48, and 49 and that the Company had failed to correct such omission within 1 (one) year after the receipt of two reminders during an interval of 2 (two) months, sent after the lapse of the time agreed for such expenditure, or
- (3) that the Lena Goldfields Company was guilty of deliberate failure in any one year to carry out its programme of production, as laid down in paragraphs 39 and 46 of the present agreement, and that on receipt in the first 3 (three) months of the succeeding year of two written protests from the Government during an

interval of a month, the Company still neglects to carry out its programme in the undertaking concerned during the succeeding year, or

- (4) that the Lena Goldfields Company has during the course of 6 (six) years neglected to fulfil the two yearly programmes of production, laid down in paragraphs 39 and 46, and that on receipt in the first 3 (three) months of the second year of such neglect of a written protest from the Government the Company has not made good its neglect for the second year during the course of the succeeding year, without disturbing the programme of production of the said succeeding year.

In the event of the Lena Goldfields Company being declared an insolvent debtor, the Arbitration Court shall decide as to whether the circumstance merits the termination of the concession.

In the event of the concession being terminated before the agreed time for reasons laid down in this article the enterprises belonging to the concession shall be transferred to the Government, in accordance with paragraph 85 of the present agreement, and the Government shall be absolved from the obligation to refund the unredeemed portion of the property as laid down in paragraph 85.

*Paragraph 89.*

The basis of the present agreement on the part of both parties is one of goodwill, conscientiousness, as well as a desire to interpret its provisions reasonably.

*Paragraph 90.*

All disputes and misunderstandings concerning the interpretation or execution of the present agreement and all appendices to it shall, on the representation of either party, be examined by the Arbitration Court.

The Arbitration Court shall be composed of 3 (three) members, one of whom shall be selected by the Government, one by the Lena Goldfields Company and the third, who is to be the super-arbitrator, shall be chosen by the two parties together by mutual agreement.

If such agreement is not reached within 30 (thirty) days, from the day of receipt by the defending party of a written summons to the Arbitration Court, giving an exposition of the matters in dispute, and the designation of the member of the Court selected by the prosecuting party, then, within 2 (two)



weeks, the Government shall nominate 6 (six) candidates from among the professors of the Freiberg Mining Academy or of the Royal Technical High School of Stockholm and shall request the Lena Goldfields Company to appoint one of them as super-arbitrator within a period of 2 (two) weeks.

If the Lena Goldfields Company fails to appoint the super-arbitrator within the said 2 (two) weeks, there being no insuperable obstacles to prevent such appointment, the Government shall be entitled to request the Council of one of the said higher academic institutions to appoint a super-arbitrator from among the aforesaid 6 (six) candidates nominated by the Government.

If the Government, in the absence of insuperable obstacles, fails to nominate the 6 (six) candidates for the super-arbitratorship within the said period of 2 (two) weeks, the Lena Goldfield Company shall be entitled to request the Council of one of the aforesaid higher academic institutions to nominate 6 (six) candidates and to appoint a super-arbitrator from among their number, as stated above.

If upon receipt of a notice from the super-arbitrator giving the day and place of the first session of the Court one of the parties, in the absence of insuperable obstacles, fails to send his arbitrator to the Arbitration Court or he refuses to participate in the session, then the matter in dispute shall, at the request of the other party, be settled by the super-arbitrator and the other member of the Court, such settlement to be valid only if unanimous.

The Arbitration Court shall appoint a permanent secretary, who shall keep records of all proceedings of the Court's sessions. The remuneration of the president and the secretary of the Court, as well as the latter's expenses shall be paid by both parties in equal proportions. Each of the parties shall pay his own arbitrator and his expenses, as well as the costs connected with the bringing of a suit before the Court.

Matters to be settled by the Arbitration Court must be presented in written form to the president of the Court, and the party bringing an action must provide the other party with a copy of its declaration to the Court. The super-arbitrator shall appoint the place and date for the holding of the first session of the Court

When appointing the date and place for a session of the Court to be held the super-arbitrator and the Arbitration Court shall give consideration to :

- (1) the reasonable length of time required for either party to make preparation for departure and arrival at the appointed place at the proper time, and
- (2) the accessibility of the place being such that either party can reach it by the date fixed.

However, if either of the parties encounters insuperable obstacles to the sending of their member to the Court or of the Court president in time to reach the appointed place at the proper time, early measures must be taken to inform the super-arbitrator of the Arbitration Court of this circumstance.

In any case, the super-arbitrator or the Arbitration Court in the event of the absence of one party's representatives to the Court, shall, on declaring a session open make a full statement relating to the matter in dispute, and the reasons for which the session has been called.

The Arbitration Court shall have full power thenceforth to fix the place and time of its sessions, as well as to settle methods and order of procedure. It shall be obligatory on each of the parties to supply the Court, at the time it requires, with all possible information and evidence relating to the case which are at their disposition, regard being had to such as may be of State importance.

All decisions of the Court must in each case be made in written form and a copy of each decision must immediately be sent to the two parties. Every majority decision of the Court shall be final and binding for both parties and shall immediately be put into execution.

If the Arbitration Court comes to a decision requiring one of the parties to do something or to refrain from doing something, it shall, at the same time, decide and warn the said party of the consequences accruing for failure to carry out its decision, namely, it shall impose the payment of a certain sum to the other party, or it shall authorise the other party to carry out the neglected work at the expense of the defaulting party, or it shall declare the agreement annulled, the latter only at the request of the plaintiff.

Validity of the  
Arbitration Court

## Concerning the Validity of the Arbitration Court as specified in Paragraph 90 of the Concession Agreement with the Lena Goldfields.

In accordance with the general practice of the Soviet Government when granting concessions, practically in all instances it is stipulated that differences which might arise in connection with the working of the concession should not be submitted to the ordinary courts of the country, but should be settled by arbitration. This state of affairs is a logical consequence of the principle of parity of both parties, which was recognised by the Government in the decree issued on December 23rd, 1920, of which article 6 reads as follows : "The Government of the R.S.F.S.R. guarantees to the concessionaire that it will make no alteration in the terms of the concession agreement by order or decree without the consent of the concessionaire."

This principle of general law was fully confirmed in par. 76 of the agreement with the Lena Goldfields. However, while guaranteeing to the concessionaire all his rights and privileges in accordance with the agreement, the latter in no way does or could offer the concessionaire extra territorial rights or even parity in questions of State administration and others. On the contrary, however extensive the privileges enjoyed by the concessionaire, the agreement provides that the relations between the concessionaire on one hand and the Government and its various departments on the other, when not exempted by special provisions, are subject to the ordinary laws of the country. In the agreement with the Lena Goldfields this was expressed in section one of par. 75, which reads : "Where no provision is made in the present agreement for special treatment the Lena Goldfields Company shall be subject to the existing legal code, and to future enactments and ordinances of the Government of the U.S.S.R."

Hence, questions not specified in the agreement, are not subject to parity, and the concessionaire must submit to the sovereign laws of the State, just like any other citizen.

The legal relations between the Government and the concessionaire are fully reflected in the constitution of the Arbitration Court, as specified in par. 90 of the concession agreement. The Arbitration Court is not a kind of universal tribunal which controls all possible relations between the Government, or its departments, and the concessionaire, while the latter is engaged in activities in the U.S.S.R. On the contrary, in accordance with par. 90, the Arbitration Court is called upon to decide only a strictly limited number of questions in dispute, as indicated in the first section of par. 30, which reads: "All disputes and misunderstandings concerning *the interpretation or execution of the present agreement*, and all appendices to it shall, on the representation of either party, be examined by the Arbitration Court."

As is seen from the above, the jurisdiction of the Arbitration Court, as specified in section 1, par. 90, is restricted by the following limitations:

1. Only disputes between the Government and the concessionaire which refer to interpretation and execution of the concession agreement are subject to the Arbitration Court. Hence all cases of conflict between the concessionaire and the State departments not specified in the agreement, but which are subject to the general laws (for instance, taxation laws, labour laws, mining laws, etc.), have to be decided in accordance with the general laws of the country, *i.e.*, either in the law courts, or by the higher administration, to which the concessionaire submits his complaints against the irregular application of Soviet laws.

2. Some extension of the jurisdiction of the Arbitration Court is provided in par. 80 of the agreement, which specifies that the Government must compensate the concessionaire not only for loss caused by the infringement of the concession agreement, but also for any loss resulting from unlawful action of the authorities in general, *i.e.*, actions not infringing the agreement, but the general laws of the U.S.S.R. However, in the last instance, in order to submit claims of loss to an Arbitration Court, the concessionaire must establish his case in accordance with par. 90, section 1, and par. 75, section 1, either in the law courts of the country or at the department concerned. Only in the case when the responsible authorities

have adjudged the action as unlawful may the concessionaire, in accordance with par. 80, submit his claim to the Arbitration Court, as an exception to the general laws (article 407 of the civil code), which do not permit such an application to an Arbitration Court. In the case that the responsible authorities of the U.S.S.R. do not recognise that the officials infringed the laws, and declare their action to be legal, the claim can then not be submitted to an Arbitration Court, since the question of interpretation of the laws of the Soviet Union, as stated above, is in accordance with par. 90, section 1, not subject to consideration by an Arbitration Court.

3. In so far as the concession agreement grants to the concessionaire a number of exemptions from the laws of the U.S.S.R. (for instance, taxation exemption, the right to import equipment, etc.), the concessionaire has a right to submit questions in dispute concerning these exemptions to an Arbitration Court. In that case, however, the Arbitration Court has only to decide, in accordance with par. 90, section 1, whether in the particular instance the general laws of the U.S.S.R. are applicable or not. Should the Arbitration Court decide that the general laws are applicable, then the case must be transferred to the ordinary court of justice for examination. For instance, par. 69 of the concession agreement exempts the concessionaire from the payment of various taxes. In case of dispute concerning the payment of a certain tax, this question is decided by the Arbitration Court, and should the latter decide in the affirmative, the question of the amount to be paid, as well as all the other points in connection with the case, are then transferred to an ordinary court for its decision. This undoubtedly is the only conclusion which can be drawn from par. 90, section 1, and par. 75, section 1.

4. The concession agreement provides a fairly definite reply to the question by what law has the Arbitration Court to be guided and on what legal basis has it to decide the cases submitted to it. Undoubtedly such indication is first of all provided in the concession agreement itself, which not only both parties, but the Arbitration Court also, in accordance with par. 79, must interpret faithfully and conscientiously and in conformity with common sense. Should there be no indication in the agreement, then the Arbitration Court must in accordance with par. 75, section 1, be guided by the general sense of laws and enactments of the U.S.S.R. In connection with this it is

important to state that the Arbitration Court, which functions in accordance with par. 90, is in no way an international Arbitration Court, and is not called upon to decide between the concessionaire and the Government on the basis of existing international law. This negative conclusion, which is important for the understanding of the Arbitration Court and the duties of the arbitrators, as appointed in accordance with par. 90, is manifest from the definite formulation of par. 75, section 1, of the agreement, as well as from the fact that the concession agreement is not the result of an international understanding between the U.S.S.R. and foreign powers. The Arbitration Court, which is provided for in the concession agreement with the Lena Goldfields Company, is therefore an internal organisation of the U.S.S.R. It is subject to the control of the Soviet Code, and the disputes are decided by this Court in accordance with the agreement. In case, however, the agreement contains no provisions for the points in dispute, these are to be decided in conformity with the general laws of the U.S.S.R.

5. When, however, the Arbitration Court, as provided for in par. 90, is an internal and not international tribunal, as is the case in the U.S.S.R., it does not follow that it must be called upon to decide only questions of the civil code. There is no doubt the concession agreement conferred on the concessionaire certain rights and exemptions, in accordance with public law, but it also imposed upon him certain obligations, as, for instance, the erection of works, the realisation of a certain output programme, and the organisation of production on a high technical level (par. 37 and following). These are by no means private obligations of the concessionaire towards the Exchequer of the U.S.S.R., but were imposed on the concessionaire in the interests of the whole national economy of the Soviet Union, and in accordance with their nature, are in the nature of public law, though the agreement does not specify it. These circumstances must be specially mentioned in connection with the cases in which the Arbitration Court raises the question of sanctions owing to the infringement of the agreement by one of the parties. As can be seen from the penultimate section of par. 90, as well as from the particularly strict sanctions imposed by par. 86, these sanctions are by no means in the nature of private law (defence of the interests of the Exchequer) but, on the contrary, are couched in such terms as to safeguard the interests of the national economy of the U.S.S.R. as a whole.

6. While noting that questions of sanctions may arise before the Arbitration Court for the infringement of the agreement in regard to civil and to public laws, it must be said, at the same time, that for determining the consequence of the said infringement of the law, and hence for fixing the sanctions in accordance with the agreement, narrower limits have been set to investigation on the part of the Arbitration Court than is usual for civil courts adjudicating in the settlement of disputes relating to civil contracts. This is particularly the case with regard to the suspension or annulment of the agreement by order of the Arbitration Court. Though, in accordance with all civil law, the Soviet civil code included, nearly every civil contract may, under certain conditions, be annulled by order of the judge, as regards the present agreement, the position is different, because of special categorical provisions to the contrary in the agreement. Presumably in consideration of the great scope of the concession and the impossibility of quickly liquidating any of its many enterprises without destroying them, the concession agreement has generally denied either party the right to demand an immediate annulment of the agreement on the ground of infringement of right by one or other party, or of material incapacity of fulfilment.

Should a rupture occur, general rules relating to the consequences of the said rupture are laid down in paragraph 80 and in the last section of paragraph 90, namely that the Arbitration Court shall order the cessation of the illegal acts, or shall order the fulfilment of certain acts, or compensation for loss incurred by infringement of the agreement. Only failure to comply with the aforesaid order shall entail the annulment of the agreement. Thus, according to the last section of paragraph 90, the Arbitration Court in its first finding only establishes the eventual right of a party to the future annulment of the agreement. The order for annulment itself, on the basis of this point, can only follow if the Arbitration Court, when considering a case for failure to comply with the first order, establishes actual default of fulfilment and the defending party demands the application of the sanctions laid down by the first Arbitration Court. There are complete exemptions from this general rule as the concession agreement contains in paragraphs 86 and 82 an exhaustive list of various categories of defaults on the part of the concessionaires, which enable the Government, while allowing considerable periods of grace,



to demand the annulment of the agreement. As regards occasions when the Government may infringe the agreement, we are unable to find a single provision entitling the concessionaire to demand immediate annulment. On the contrary, in so far as the infringement of any of the concessionaire's rights is concerned, the agreement limits the concessionaire to sue for compensation of loss, to withhold payment to the Government, etc., quite obviously denying the right to immediate annulment. The concession agreement applies the same principle to the case of a partial or complete impossibility of carrying out the agreement owing to circumstances outside one party's control (*force majeure*, see paragraph 83). Herein the agreement only permits of the postponement of the execution of certain obligations until the removal of the aforesaid obstacles, but makes no provision for the immediate annulment. Thus, according to the agreement, the concessionaire is not entitled at the first dispute to demand the immediate annulment of the agreement, and hence it follows that in the present dispute the Arbitration Court too is not entitled to arrive at a decision for the annulment of the agreement without the formal consent to the said annulment on the part of the Government.

7. In concluding our observations on the nature of the competence of the Arbitration Court as laid down in paragraph 90, it must be stated that in accordance with the aforesaid paragraph, when an Arbitration Court is appointed by the two parties to adjudicate in a particular dispute, it is not thereby transformed into a permanent or even temporary and universal Arbitration Court, competent to settle all manner of disputes that may arise between the parties during the examination of the first dispute.

We assert that the Arbitration Court, in accordance with paragraph 90, is only competent to settle such disputes as had been submitted to it at the time of its appointment and that it is not competent to undertake the examination, without the consent of both parties, of new disagreements and disputes which have arisen as the result of the action of the one party, after its appointment, and which evidently have their origin in subsequent circumstances. In the first place, according to the agreement with the Lena Goldfields Company, the Arbitration Court itself is an undisputed exemption from the prevailing laws of the U.S.S.R., similar to a number of other exemptions accorded by the agreement. Such an exemption from pre-

vailing law can nowhere, least of all in the U.S.S.R., be interpreted as of extensive application, hence the Arbitration Court has no title to extend its own competence. In the second place, section 3 of paragraph 90 provides that the party which is bringing an action before the Arbitration Court and invites the other party to appoint its arbitrator and to proceed to the appointment of a super-arbitrator must supply the other party with "a statement of the question in dispute." This provision throws a special light on the peculiar method of appointing the super-arbitrator, laid down in paragraph 90, under which the Government nominates six candidates from whose number the Company appoint one.

All these conditions taken together go to show that the Government, in the appointment of the super-arbitrator, has not only been accorded the exclusive right to put a strict limit to the sphere from which individual candidates may be drawn, but to select candidates with the right qualifications for the dispute in point. An arbitrary extension of the competence of the super-arbitrator to disputes which have newly arisen on the strength of some new infringement of the agreement would mean a direct repudiation of the said right of the Government.

8. In regard to the circumstances explained in paragraph 7, we have approached the concrete question: Had the Arbitration Court appointed by the Government and the Company on the basis of an exchange of writs and charges in the telegrams of February 12 and 26 of the current year, the right to declare that it "continues in session" after the Company had arbitrarily thrown up the concession and the Government, on the strength of this act, which had altered any possible future disputes, had declared that the Arbitration Court as at present constituted had lost its authority? After all that has been said in paragraph 7 regarding the super-arbitrator not being entitled, without the consent of both parties, to extend his competence to new disputes, the solution of the question raised depends entirely on whether the arbitrary act of the Company gave rise to a new dispute. From the protocol of May 9 of the present year, drawn up by the super-arbitrator and the arbitrator appointed by the Company, it is evident that the arbitrators did not examine this primary and decisive question. It was only the Company's attorney, to judge by the protocol, who stated that all possible future disputes between the parties were covered by the telegram

of charge sent by the Company on February 12th. But the latter statement we categorically deny as untrue.

In the Company's telegram of February 12th, on a par with complaints of the infringement of definite paragraphs of the agreement, there is a complaint that the Government by different actions had made it actually impossible for the Company to carry out the concession agreement. As shown above (see paragraph 6), according to paragraphs 90, 86, 82 and 80, in the first stage of a dispute the Company is not entitled to demand the annulment of the agreement, nor is the Arbitration Court entitled to decide in favour of annulment on the charge of the Company; on the broadest interpretation the complaint in question can have one meaning, namely, that the Company had requested the Arbitration Court to bring in a judgment against the Government, ordering it to stop certain actions, which in its view hindered the realisation of the agreement and to pay compensation for the losses which the said actions had entailed to the Company. Consequently, in the exchange of telegrams there has not and could not have been any question of the suspension of the agreement but only of mutual demands. What has happened now? The Company has evidently failed to observe the existing methods for protecting a party's rights and the procedure for the settlement of disputes, laid down in the agreement; it has arbitrarily thrown up the concession, declaring that it would under no conditions renew operations to fulfil the agreement. Notwithstanding the illegality of the said act on the part of the Company, the Government has intimated its willingness to examine the conditions for the suspension of the agreement and to make a liquidation settlement with the Company. After this, any dispute between the parties, had such dispute arisen, would have been of a different character. For no matter how much the parties might have pleaded infringement of agreement prior to the act of the Lena Goldfields Company, henceforth there could obviously have been only a dispute about the conditions for suspension of the agreement and the amount to be agreed upon by both parties as due to the Company in connection with liquidation. About this at the formation of the Arbitration Court there was not and could not have been any question, because the fact of the arbitrary departure of the Company from the concession had not arisen and the Government had not yet consented to commence liquidation.

It was this that decided the question of suspending the authority of the first Arbitration Court. The Arbitration Court was transformed, beyond the limits of its competence, into a group of private persons, whose decision to "continue in session" can have no legal consequence for either of the parties.

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С 1767

## Can the Settlement arrived at by the Arbitration Court be extended to the Present Dispute?

A negative answer to this question would seem to follow from the last thesis of my colleague, Professor V. N. Shreter.

For the rest, it will be relevant to restate my conclusions respecting the question in point, which have already been published.\*

The conclusions to which I refer were as follows: The communication to the Press sent by the Arbitration Court about its first session respecting the case of the Lena Goldfields Company versus the Union of the S.S.R. contained among other things the following statement: "The Soviet member of the Court failed to put in an appearance, because the view of the Soviet Government was that as the Lena Goldfields Company had broken the agreement by the suspension of operations in the concession enterprises and had recalled its foreign representatives, hence the Arbitration Court which was provided for in the concession agreement had lost its validity."†

This statement does not correspond to the actual facts, nor is it correct. It is self-evident that neither of the parties has the right or the power to annul the concession agreement of his own accord. If that is so, the Soviet Government could not have stated that the agreement had been annulled by the Lena Goldfields Company, and it could consequently not have arrived at the conclusion that the Arbitration Court provided for in the concession agreement was no longer competent to function. Such a conclusion would have been devoid of sense. But the Soviet Union was not guilty of it in any way whatever. As a matter of fact, the question had relation to something quite different. When, on the basis of the concession agreement, the parties instituted an Arbitration Court, the interest and concern of the Soviet Government

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\* *Industrie und Handelszeitung* of May 14, 1930.

† *Berliner Tageblatt*, evening edition of May 10, 1930.

was to induce, and if necessary to compel, the other party to fulfil the concession agreement and to carry out the programme of production. This is what should have been the subject of examination by the Arbitration Court; this is what should have been the subject of the settlement, and is, as far as we know, the fundamental subject of the arbitration proceedings. Meanwhile, the actual circumstances had fundamentally changed; because, during the interval, the Lena Goldfields Company had suspended all operations, had recalled its employees, representatives and technical staff from the U.S.S.R., had withdrawn the powers of attorney, abandoned the whole property to its fate, declining any kind of responsibility for it. Moreover, the Company had declared that it would not renew the working of the concession even if particular circumstances were changed. This fact, obviously, deprived the settlement of consequence as a basis of arbitration examination and the Arbitration Court itself lost all consequence. The question now can be only one of compensation and relative figures, which, as previously stated, is entirely different from the former question. The particular Arbitration Court instituted by the parties and headed by a distinguished German geologist in the capacity of super-arbitrator had been entrusted by the Soviet Government with the solution of the question of the *fulfilment* of the concession agreement, not with the *estimation* of the amount due in compensation for loss caused by the suspension of the concession; for the latter purpose there might have been other, more suitable, specialists of *another kind*. To put it more briefly, the problem had become a *new* one and hence a *new* settlement on the basis of the agreement became necessary. Such a settlement the Soviet Government, in the person of the Central Concessions Committee, had declared its willingness to negotiate, soon after the Lena Goldfields Company had categorically declared the concession abandoned. This explains why the Soviet member of the Arbitration Court did not put in an appearance in court. Thus, and in no other way, the question presents itself. Everything is plain and clear, and as convincing from the view of practical and natural experience, as from the fundamental basis of justice.

There is no need to enlarge upon the fact that the above explanation leads to the conclusion that for each arbitration process, the parties must make a special settlement (*Compromissum, Compromis, Compromiss*). This proposition can be considered as generally accepted.

And it follows from this that beyond the limitations of a settlement pertaining to the case in dispute investigations by the Arbitration Court *are not permissible*, for they are *irrelevant to the case*. There is much justice in the juridical proverb *Extra compromissum arbiter nihil facere potest*. That is, the arbitrator is not entitled to adjudicate beyond the settlement of a particular dispute. Thus, to apply this to the present occasion, the Arbitration Court was competent to examine such questions as related to the fulfilment, or rather to the non-fulfilment or the improper fulfilment of the concession agreement, of the infringements of its provisions and even of its "repudiation," etc. But this same Arbitration Court was *not competent* to examine questions such as the suspension or the annulment of the concession agreement and the legal consequences ensuing therefrom, such as compensation for loss caused by the suspension of the agreement, and so on.

In conclusion there is only one thing to be added. Who has to decide the extent of competence of a settlement, as a basis for arbitration proceedings? Is it the function and obligation of the Arbitration Court? And can it be so even when there is no positive legal warrant on the subject?

Let us see what a first-class authority on jurisprudence has to say on the subject—and what he says is applicable to all occasions, even when, contrary to the present case, legal precedents exist, and even when the latter are in favour of the Arbitration Court itself.

"An insoluble dispute may arise as a result of one party failing to agree to the interpretation of the arbitration settlement given by the Arbitration Court. *A declaration of this kind from one of the parties to the dispute ends the arbitration proceedings in an unconditional and legally indisputable way.*"

PROFESSOR M. Y. PERGAMENT.

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\* Philipp Zorn. *Die beiden Haager Treidenskonferenzen* (in *Handbuch der Voelkerrechts*," III, 2), p. 71.

