Contractual Dispute Resolution in Industrial Equipment Acquisition: A Brazilian Perspective

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Abstract

This case study examines a contractual dispute between there companies: a Brazilian manufacturer of household appliances and a Brazilian company specializing in customized industrial equipment solutions, and an Italian company. Both companies engaged in a buyer-seller negotiation to acquire a machine to automate a production process, but the equipment failed to perform as specified. Despite numerous attempts at adjustment, the machine's performance issues persisted, leading the buyer to withhold the final payment. The seller's alleged closure further complicates the situation, raising concerns about the feasibility of resolving the dispute and recovering invested amounts, from which solutions may be helpful to negotiators, vendors, business managers, scholars, and other practitioners. Ultimately, this study highlights the importance of robust contractual agreements, thorough vendor qualification, and effective dispute-resolution mechanisms in the acquisition of industrial equipment.

Keywords: *Negotiation; industrial equipment acquisition, Contractual disputes, dispute resolution.*

1. Introduction

In this article, we examine a failed Type IV industry, buyer-seller negotiation ((Dias et al., 2023; Dias, 2023; Fisher, Ury & Patton, 1981; Lax & Sebenius, 1986), following Dias (2020), by which three parties negotiate multiple items. The names and identities were preserved for compliance and ethical reasons and are hereafter referred to simply as "Brazilian Manufacturer," "Italian Manufacturer," and "Customer."

We followed Yin (2004) in describing the failed negotiation case between three companies, two national and one international. Firstly, in the corporate sector, business conflicts are prevalent (Dias, 2020a, 2020b; Dias, Lopes & Duzert, 2020; Fisher, Ury, & Patton, 1981; Salacuse, 2006; Shell, 2006). Whether resulting from contractual conflicts, shareholder disputes, or partnership issues, these disputes can disrupt operations and threaten corporate relationships (Dias, 2020c; Shell, 2006). Although alternative formal dispute resolution techniques, such as litigation, are accessible, bargaining is a valuable instrument for rapidly and reasonably cost-effective conflict resolution (Fisher, Ury & Patton, 1981). This article will discuss the advantages of bargaining as a tactic in business conflicts, along with its workings and when it is most helpful. Negotiating is a flexible and cooperative method wherein parties engaged in a conflict can reach a consensual agreement (Pruitt, 1981, p. xi) without the need for a third-party decision-maker, such as a judge or arbitrator. Negotiating is typically the recommended course of action for resolving business conflicts (Dias, Lopes, & Teles, 2020; Salacuse, 2003).

Negotiation has also been investigated in different contexts, drawing the aterntion of scholars recently on business negotiations (Dias, Waltz & Oliveira, 2021; Dias, Duzert &

Lopes, 2021; Dias & Lopes, 2020; Dias & Lopes, 2021; Dias, 2021; Dias & Navarro, 2020; Dias, Lopes, Cavalcanti & Golfetto, 2020; Dias & Silva, 2021; Dias, Netto, Oliveira et al., 2021; Dias, Andrade, Sotoriva, et al., 2021; Dias & Lopes, 2021; Sartori et al., 2020). The Four-Type Negotiation Matrix (Dias, 2020) classifies this Type II negotiation—where many parties participate in discussing a single issue—financial compensation—as such. Emphasizing the possibilities and difficulties that arise from interactions among people with diverse interests and expectations, this paper aims to investigate the negotiation process.

2. Methodology

This study employs a qualitative research methodology, utilizing a single case study design to analyze the complexities of a judicial settlement in the context of industrial equipment acquisition. According to Yin (2004), a case study approach is particularly suitable for exploring the intricacies of a specific phenomenon within its real-life context. In this research, the cases of the Manufacturer and Customer serve as representative examples of the challenges and opportunities arising from contractual disputes in industrial equipment acquisition. By adopting a qualitative approach, this study aims to provide an in-depth understanding of the dynamics at play in this specific case, including the interactions between the parties involved, the role of contractual agreements, and the influence of performance issues on the dispute resolution process.

The data collection process for this case study involved a thorough examination of relevant documents, including contractual agreements, correspondence between the parties, direct participation of one of the authors, and court records. Additionally, insights were gathered from secondary sources, such as academic articles, to provide context and background information on industrial equipment acquisition and contractual disputes. The data analysis process employed content analysis, following the methodology outlined by Saunders et al. (2009). This approach enabled a nuanced understanding of the complexities of the judicial settlement and the factors that influenced its outcome. By adopting a rigorous and systematic approach to data collection and analysis, this study aims to provide a rich and detailed account of the case, shedding light on the intricacies of contractual disputes in industrial equipment acquisition. This approach is consistent with Stake's (1995) recommendations, who emphasizes the importance of gathering multiple sources of evidence in case study research. Figure 1 illustrates the Type II negotiation between buyer and seller, as follows:

Figure 1. The Four-Type Negotiation Matrix
Source: Dias, 2020. Reprinted under permission.

3. Background and Negotiation

The Brazilian customer, a manufacturer of household appliances, identified the need to acquire a machine for the automation of an industrial process. The customer had already acquired some machines from an Italian company to compose its production line. The customer was aware that the recent acquisition had great expertise in industrial machinery and a vast technical knowledge base to design customized equipment that met the needs of each customer. When the need arose to purchase new equipment to automate a step in the production process of the locks, the customer created a budget with an Italian Manufacturer, which promptly made itself available to develop this new project, as it was equipment that did not yet exist on the market. Given the complexity of this new machine, the budgeted amount for the design, execution, delivery, and installation of the machine was R$ 3,500,000.00 ($625,000).

Parallel to this, a company called Brazilian Manufacturer (seller) emerged in the Brazilian market, selling ready-made and customized solutions for manufacturing processes. The customer's technical team contacted the Brazilian Manufacturer (seller) and requested a quote. Brazilian Manufacturer (seller), claiming to have the technical knowledge to develop the product, budgeted the equipment at R$ 400,000.00 ($71,430). Given the vast difference in values, the customer closed the purchase with a Brazilian Manufacturer (seller). The contract was signed, the delivery deadline was adjusted by 90 days, and the installments were agreed as illustrated in the following Table 1:

Table 1 Installments' schedule

R$ 80,000.00	Entry – on the contract request/signature
R$ 80,000.00	30 days
R$ 80,000.00	60 days
R$ 80,000.00	90 days
R$ 80,000.00	Technical delivery
R$ 400,000.00	**TOTAL**

4. Operational Issues

The machine was delivered on time and installed. The next day, it began to experience operational problems. Numerous alignment meetings and adjustments were made to the equipment, but it was never possible to find a final solution. At a certain point, the Brazilian Manufacturer (seller) stopped making its technical team available to solve the problems. Considering that the equipment never performed as specified in the project and contract, the technical delivery did not occur, and therefore, the payment of the last installment was withheld.

A few months later, the Brazilian Manufacturer (seller) protested the last installment due to non-payment. In response, the customer sent an extrajudicial notification to the Brazilian Manufacturer (seller), explaining that the payment had not occurred due to a technical delivery issue and requesting that the machine's performance problem be immediately resolved.

5. Infringement Of Patents

Amid this discussion between the Brazilian companies and the Italian Manufacturer, the Italian company notified the Brazilian Manufacturer (seller) of allegedly copying the Italian project (a patented project) and the customer for having acquired plagiarized or illegal machinery. In the notifications, the Italian Manufacturer requested that the Brazilian Manufacturer (seller) compensate for the loss of profits, provide compensation, and immediately interrupt the production of the equipment model, under penalty of civil and criminal lawsuits. The customer requested that the equipment purchased from the Brazilian Manufacturer (seller) be disposed of and a new one from the Italian Manufacturer be purchased.

6.Negotiation Analysis

The scenario for the Customer became the following: (a) Regarding the Italian Manufacturer (Italian): The Customer explained to the Italian Manufacturer that it acquired the equipment from another company solely for the reason of a lower price. The Customer Is already a long-time business partner; they agreed that the following equipment (which was already expected to be purchased) would be acquired from the Italian Manufacturer. The Italian Manufacturer would provide possible future technical assistance for the plagiarized product.

About the (b) Brazilian Manufacturer (seller) (Brazilian), the Customer's board of directors guided the possible options in agreement: as the equipment had a partial performance, that is, part of it met the production process, part did not, the following would be possible: (i) they would accept the equipment as it was, and the final payment of R$ 80,000.00 would be released (with the cancellation of the protest, inclusive); (ii) if Brazilian Manufacturer (seller) demanded payment of the amount, they should find a definitive solution for the machine, and should, in the end, perform at 100% of its capacity; and finally option (iii) refund of the amounts paid by Brazilian Manufacturer (seller), and delivery of the equipment by the Customer. For this, an extrajudicial notification should be sent. As an alternative, if it is not feasible to reach an agreement, a lawsuit should be filed demanding compliance with the contract (adjustment of the machine for performance according to the project or return of the amounts paid and delivery of the equipment). In the event of a lawsuit, the Customer would not accept to keep the equipment as it is.

7. Undefined Situation

The extrajudicial notification was sent, and the parties did not reach any agreement. Thus, it was necessary to file the lawsuit. As the machine was stopped occupying ample space within the factory, the customer chose to file the lawsuit demanding the return of the amount paid and the removal of the equipment from its headquarters. The production process was impaired, and the company urgently needed to acquire a new machine that would meet its needs. For this, it was crucial to free up the space occupied by the Brazilian Manufacturer's (seller's) machine.

After consulting with the lawyers, it was concluded that two lawsuits needed to be filed: the first was to conduct a technical examination to attest to the judge that the equipment did not function properly. With the sentence of the latter, the entry of the second demand, requesting the dismantling of the equipment and return of the amounts paid, duly corrected.

The first process was filed, and the expertise has already been carried out. The expert report was added to the records, and the Brazilian Manufacturer (seller) contested it. There is still no sentence. Recently, news circulated that a Brazilian Manufacturer (seller) closed its activities, thereby leaving the possibility of success in the second lawsuit (return of the amounts paid) negligible. Given the news, the customer is reassessing the feasibility of filing the second lawsuit since it will likely lose more money (legal costs). Currently, the case remains undefined.

8. Discussion and Implications

Particularly when multiple parties are involved, the case study highlights the complexity of contractual conflicts in the procurement of industrial equipment. The customer faces a challenging scenario resulting from the Brazilian Manufacturer's (seller) failure to deliver the functioning machine, as well as the Italian Manufacturer's claims of patent infringement. Given the situation, the customer's choice to sue, requesting a refund of the money paid and the equipment taken from its premises, appears reasonable. The instance also emphasizes the need for solid contracts and extensive vendor certification. Significant losses have resulted from the customer not verifying the reputation and knowledge of the Brazilian Manufacturer prior to purchasing the equipment. The recommended fix sounds sensible: examining the financial status of the Brazilian Manufacturer and possibly dismantling the equipment to extract its components could help resolve the case. The case study emphasizes the significance of thorough vendor qualification in industrial equipment procurement. The Customer's failure to verify the Brazilian Manufacturer's credibility and expertise before investing in the equipment has led to significant losses. This experience serves as a valuable lesson for businesses to prioritize vendor qualification, including assessing the supplier's financial stability, technical capabilities, and reputation.

Robust contractual agreements are also crucial in the acquisition of industrial equipment. The case highlights the importance of contracts that include provisions for performance standards, penalties for non-compliance, and effective dispute-resolution mechanisms. By including such provisions, businesses can minimize the risk of disputes and ensure that suppliers meet their obligations. Effective dispute-resolution mechanisms are essential in resolving conflicts efficiently and cost-effectively. The case highlights the importance of businesses adopting alternative dispute resolution methods, such as negotiation, mediation, and arbitration, to resolve conflicts without resorting to litigation. The case also highlights the importance of risk management in industrial equipment acquisition. Businesses should identify potential risks, assess their likelihood and impact, and develop strategies to mitigate them. By prioritizing risk management, businesses can minimize losses and ensure business continuity. Ultimately, the case study provides valuable insights for businesses involved in industrial equipment acquisition. By prioritizing vendor qualification, establishing robust contractual agreements, implementing effective dispute resolution mechanisms, and managing risk, businesses can minimize losses and ensure successful outcomes.

By adopting a pragmatic approach to resolving the dispute and prioritizing the acquisition of new equipment from the Italian supplier, the Customer can minimize losses and ensure business continuity. Additionally, the Customer can use this experience to develop more robust procedures for purchasing equipment, including thorough vendor qualification and contract negotiation. The study also highlights the complexities of business disputes, implying in other fields of research, such as buyer-seller negotiations (Dias, Waltz & Oliveira, 2021; Dias, 2020a; Dias, 2020b; Dias, 2020c; Dias, Duzert & Lopes, 2021; Dias, 2020; Dias, Lopes & Teles, 2020; Dias, Lopes & Duzert, 2020; Dias, Lopes, Cavalcanti & Golfetto, 2020; Dias & Silva, 2021; Dias, Netto, Oliveira et al., 2021; Dias, Andrade, Sotoriva, et al., 2021; Dias & Lopes, 2021; Sartori et al., 2020).

9. Managerial Recommendations

Suggested resolution: The customer would investigate the real economic and financial situation of the Brazilian Manufacturer (seller). If it is proven that there was a closure of activities, arrangements would be made for the dismantling of the equipment and the sale of its parts. He would no longer insist on the solution to the conflict because he would be "putting good money on top of bad money." The mistake occurred in the past when the Brazilian Manufacturer's (seller's) credibility and expertise were not verified before investing in the equipment. There is little possibility of a solution. As it is a personalized product and not a "shelf" product, there are no qualified professionals to adjust it. Therefore, it would discard/sell the equipment to free up space in the factory and buy a new one from the Italian supplier (thus complying with what was agreed upon when the notification was made). Internally, it would design a procedure related to the purchase of equipment, involving proof of the company's expertise in acquisition.

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6. Conclusion

This case study highlights the complexities involved in contractual disputes related to the acquisition of industrial equipment. It emphasizes the need for thorough vendor qualification, strong contractual agreements, and effective mechanisms for resolving disputes. The findings provide valuable insights for businesses and practitioners, stressing the importance of proactive risk management and strategic planning to mitigate the risks associated with such disputes. By understanding the intricacies of these conflicts, businesses can develop more effective strategies for both preventing and resolving issues, ultimately ensuring successful outcomes in the acquisition of industrial equipment.

7. Research Limitations and Future Research

The single case study design can restrict generalizability to different settings, and the qual itative approach might be prone to researcher prejudice. The scope of the case is confined to a particular sector (industry) and setting (Brazilian market). Furthermore, the study's temporal reach could not adequately reflect the long-term consequences of the contractual conflict for the company reputations, for instance. Finally,
examining many examples, using quantitative techniques, and gathering primary data mig ht help future studies to provide a more complex knowledge of contractual conflicts in ind ustrial equipment purchases.

Future research could build on this study's findings by examining multiple cases of contractual disputes in industrial equipment acquisition, exploring the effectiveness of different dispute resolution mechanisms, and investigating the impact of digitalization on contractual relationships. Additionally, studies could investigate the role of vendor qualification, contract management, and risk assessment in preventing contractual disputes, providing valuable insights for businesses and policymakers to improve contractual outcomes.

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