

## What Satisfies the Requirement of a 'Reasoned' Arbitration Award?

**Judge Abraham J. Gafni (Ret.)**

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### **ADR**

Whether to require a “reasoned” award is a decision parties must consider when setting out the rules under which an arbitration will be conducted.

Typically, arbitrators simply issue an award and provide no explanation of the basis for the decision. Parties often favor this as it assures that decisions will be issued speedily and with finality. Such finality is generally assured as the Federal Arbitration Act at Section 10, and virtually all state arbitration acts, require that courts confirm such awards while providing limited grounds upon which they may be vacated. These grounds generally include obvious ones such as corruption, fraud, partiality, misconduct or other prejudicial misbehavior. In addition, confirmation is required unless the arbitrators exceeded or imperfectly executed their powers so that a mutual, final and definite award upon the subject matter was not made or did not comply with the terms of the parties’ agreement. Finally, many courts will refuse to confirm awards that were made in manifest disregard of the law.

Thus, courts have repeatedly stated that, “a party moving to vacate an arbitration award has the burden of proof and the showing to avoid confirmation is very high.” Courts are compelled to confirm a simple award, so long as there was “only a barely colorable

justification for the outcome reached by the arbitrator.” Otherwise stated, the award must be confirmed “if a ground for the arbitrator’s decision can be inferred from the facts of the case.” (See *Smarter Tools v. Chongqing SENCI Import & Export Trade*, (USDC, SDNY, 18-cv-2714 (AJN), March 26).

In the absence of a reasoned opinion, however, courts are generally unable to determine the actual basis upon which the award was entered. Accordingly, they cannot refuse confirmation by speculating about a manifest disregard of the law or assuming that there was no colorable justification for the award.

Increasingly, many parties and international provider organizations are requiring reasoned awards because they sense that compelling arbitrators to explain their findings will produce decisions supported by a more careful analysis of the evidence and legal arguments. More importantly, perhaps, the arbitrator’s conclusions in a written reasoned award may provide support for opposition to confirmation based upon a claim of manifest disregard of the law or no legal justification, thereby undermining the benefit of finality.

But what satisfies the requirement of a reasoned award?

This issue was faced recently by the federal court in *Smarter Tools*, cited above. The case involved claims and counterclaims over the sales of generators in an international transaction, including counterclaims by Smarter Tools (STI) that Chongqing SENCI Import & Export Trade (SENCI) had provided generators that were defective or noncompliant with EPA rules and had unilaterally canceled scheduled deliveries.

The arbitration agreement required that the arbitrator issue a reasoned award.

The six-page award ultimately issued included:

- A description of the parties and the proceedings;
- An evidentiary ruling concerning the exclusion of the damages testimony of an STI expert witness and certain exhibits “because they do not constitute proper rebuttal evidence or testimony or are otherwise subject to valid grounds for objection;” and
- Incorporation of a stipulation of the parties as to STI owing SENCI a balance, after credit for returned generators, of approximately \$2.4 million.

However, the arbitrator made no finding as to “whether any of the generators provided by SENCI were defective or noncompliant, nor whether SENCI unilaterally canceled scheduled deliveries.”

Accordingly, the award provided that:

- STI must pay SENCI \$2.4 million pursuant to the stipulation of the parties; and

- STI's claims against SENCI relating to defective or noncompliant generators and improper cancellation of deliveries were denied.

STI filed a petition to vacate the arbitral award alleging a failure to issue a reasoned award; and a manifest disregard of the law.

### **Failure to Issue a Reasoned Award**

In discussing the requirements for a reasoned award, the court made the following observations:

- If the parties have not requested a reasoned award, the arbitrator may issue an award that does nothing more than announce the result;
- Here, the parties did request a reasoned award;
- A reasoned award requires "something more than a line or two of unexplained conclusions, but something less than full findings of fact and conclusions of law on each issue raised before the panel;" and
- "A reasoned award sets forth the basic reasoning of the arbitral panel on the central issue or issues raised before it but need not delve into every argument made by the parties."

In this case the court found that the arbitrator failed to satisfy the requirements of a reasoned award as it contained no rationale for rejecting STI's claims. The arbitrator merely stated that he had heard all of the testimony and reviewed all of the documentary proofs and exhibits but did not find that they supported STI's claims. It acknowledged that the arbitrator had made a negative credibility determination as to STI's expert witness and provided a rationale for rejecting STI's calculations of its lost profits and good. No basis, however, was presented for dismissing the totality of STI's claims. In particular, the award nowhere addressed the contention relating to SENCI's failure to provide nondefective, compliant generators or its unilateral cancellation of scheduled deliveries.

The court explained that while the arbitrator was not required to discuss every piece of evidence presented by STI, there was a requirement that some rationale must be provided for the rejection of STI's overall argument for SENCI's liability.

The court concluded, therefore, that the arbitrator exceeded his powers when he rendered a form of award that did not meet the standard of a reasoned opinion and, thus, "did not satisfy the requirements the parties stipulated to in their arbitration agreement."

### **Manifest Disregard of the Law**

The court, however, rejected the argument by STI that vacatur of the arbitral award was warranted based on a manifest disregard of the law as set forth in the U.N. Convention on Contracts for the International Sale of Goods (CSIG). This result would require that the

arbitrator knew of the governing legal principles of the CISG and yet refused to apply them or ignored them altogether. Moreover, for a manifest disregard of the law to be found, the relevant principles of law must be well-defined, explicit and clearly applicable to this case.

In reviewing the award before it, the court could neither determine whether the arbitrator had ignored governing provisions of the CISG nor second guess the arbitrator's application of the relevant law.

### **Vacatur or Remand?**

What remedy, then, was appropriate in light of the arbitrator's failure to produce a reasoned award? Should it vacate solely because the award did not satisfy this requirement? Or, should it remand the matter to the arbitrator so that a reasoned award might be issued?

The court was not prepared to vacate the award. It concluded that vacatur "must be strictly limited 'in order to facilitate the purpose underlying arbitration to provide parties with efficient dispute resolution thereby obviating the need for protracted litigation.'" In the instant case, therefore, "the proper remedy is to remand to the arbitrator for clarification of his findings." The court would then be in a better position to determine whether the arbitrator had exceeded his powers or issued an award reflecting a manifest disregard of the law.

In summary, when considering the nature of the award to be issued by the arbitrator, parties must weigh the relative benefits of speed, finality and transparency associated with various forms of arbitrator awards. Moreover, if a reasoned opinion will be required, the parties must feel confident that the arbitrators fully appreciate and are prepared to assume the obligations imposed upon them by this requirement. •

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