Seeing "Reason" in Arbitration Awards

Recent US appeals court rulings provide clarity

By Ava J. Borrasso

The level of detail required in an arbitration award is determined in large part by the agreement of the parties with respect to whether the award is standard, reasoned, or requires even greater specificity in the form of findings of fact and conclusions of law. But what, exactly, constitutes a "reasoned award?"

This question has been the focus of many challenges. Recently, the United States Court of Appeals for the Second Circuit applied the rationale previously set forth by the Fifth and Eleventh Circuits.

The Second Circuit's most recent pronouncement, in *Leeward Construction Co. Ltd. v. American University of Antigua*, assessed the issue with respect to a challenge to an international arbitration award. In affirming the district court's denial of that challenge, the court explained:

> "… [a] reasoned award is 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. A reasoned award sets forth the basic reasoning of the arbitral panel on the central issue or issues raised before it. It need not delve into every argument made by the parties. The award here satisfies that standard: while it does not provide a detailed rationale for each and every line of damages awarded, it does set forth the relevant facts, as well as the key factual findings supporting its conclusions. The summary nature of its analytical discussion reflects only that, as the district court found, '[t]he parties had ample opportunity to contest Leeward's entitlement to compensation for change order work, and the summary nature of the discussion in the decision shows that the panel simply accepted Leeward's arguments on this particular point.' No more is needed."

In reaching its determination, the court relied substantially on the rationale set forth by the Eleventh Circuit in *Cat Charter, LLC v. Schurtenberger*, where the issue was fully examined in the context of a lower court decision that vacated a domestic arbitration award.

The background of the *Cat Charter* opinion highlights the importance of issuing an award in proper form and the potential ramifications of failing to do so. After the panel issued a unanimous, albeit brief, award, the losing party opposed a petition to confirm the award and sought to vacate it based on the argument that the panel exceeded its authority by issuing an award that was not sufficiently reasoned. The district

court reviewed the applicable rules (the commercial rules of the American Arbitration Association), determined that the parties had agreed in writing to modify them to require a reasoned award, reviewed the award, and found it deficient. As a result, the court held that the arbitrators had exceeded their powers under the Federal Arbitration Act by failing to conduct the arbitration pursuant to the parties' agreement and vacated the award. Significantly, the district court also held that the panel was rendered *functus officio* upon issuance of the award and therefore lacked the power to modify the award, presumably leaving the parties to embark on a new arbitration before a new panel.

On appeal, the Eleventh Circuit reversed, holding that the award met the requisite standard:

> "Logically, the varying forms of awards may be considered along a 'spectrum of increasingly reasoned awards, with a 'standard award' requiring the least explanation and 'findings of fact and conclusions of law' requiring the most. In this light, therefore, a 'reasoned award is something short of findings and conclusions but more than a simple result.' "

The court reasoned that "the Panel provided a detailed explanation for the only conclusion that truly required it" — the request for the prevailing party's attorneys' fees. On that issue, by rejecting the plaintiffs' civil theft claim while also denying the defendant's request for fees as the prevailing party, the panel decided that the claimant had raised substantial factual issues justifying the denial of respondent's fee request.

The court relied on the heavy presumption favoring confirmation of awards and concluded:

> "… In the present case, three validly-appointed arbitrators oversaw a five-day hearing and rendered a thoughtful, reasoned award. We decline to narrowly interpret what constitutes a reasoned award to overturn an otherwise apparently seamless proceeding. The parties received precisely what they bargained for — a speedy, fair resolution of a discrete controversy by an impartial panel of arbitrators skilled in the relevant areas of the law. To vacate the Award and remand for an entirely new proceeding would insufficiently respect the value of arbitration and inject the courts further into the arbitration process than Congress has mandated. As such, the Award should be confirmed and this controversy should be put to rest once and for all."

The Eleventh Circuit's rationale was adopted by the Fifth Circuit in *Rain CII Carbon, LLC v. ConocoPhillips Co.* In that case, a defendant supplier challenged an award in favor of a buyer for lacking sufficient specificity and the court explained:

> "… if Conoco wanted a more thorough discussion of why the arbitrator reached the decision he did, it could have contracted for an award to include findings of fact and conclusions of law. Instead, the parties agreed to a reasoned award, which, according to our case law, is more than a simple result. In eight pages, the arbitrator laid out the facts, described the contentions of the parties, and decided which of the two proposals should prevail. It is, at the very least, doubtful that the award is not more than a simple result. …"

The court declined to vacate the award.

What are we to make of all this? The Second Circuit, in its opinion in *Leeward Construction,* is the most recent appellate court to join the rationale set forth by the Eleventh Circuit and embraced by the Fifth Circuit as to what constitutes a "reasoned award."

In short, the courts addressing the issue thus far have identified an award as sufficiently reasoned when it falls between a plain statement of result and detailed findings of fact and conclusions of law. Given the breadth of that middle ground and the strong pro-arbitration posture of US courts, the issue of what constitutes a "reasoned" award appears to be substantially resolved. ■

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