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Odean Volker in Law360: What is a 'Reasoned Award' in International Arbitration?

By: Odean Volker

A final award is the culmination and determinative conclusion of an international arbitration. The U.S. Federal Arbitration Act (the "FAA"), however, does not dictate the form that an arbitration award should take. In this absence of statutory guidance, U.S. federal courts have determined that the default position is that arbitrators need not give reasons for their awards.[1] The FAA, and resulting jurisprudence, stands in contrast to arbitral laws of more recent vintage. For example, the UNCITRAL Model Law and the English Arbitration Act of 1996 are explicit in requiring that arbitration awards provide reasons.[2] Likewise, many international institutions have included in their rules a default position that arbitrators provide reasons for their awards.[3] But what is a reasoned award? And why does the meaning of "reasoned award" matter in a U.S. court?

What is a Reasoned Award?

The term "reasoned award" is not defined in the FAA, and articulating a satisfactory description of the required elements of a reasoned award has been an elusive task. U.S. courts have recognized some surprisingly minimal awards as "reasoned" while, in the name of producing a reasoned award, arbitrators sometimes write many hundreds of pages examining in excruciating detail the parties, their dispute, and the arbitrators' analysis and decision. The esteemed English jurist, then-Lord Justice Thomas Bingham, explained his view that a reasoned award should contain:

1. A recital of formal and not so formal matters such as the particulars of the contract from which the dispute arose, the arbitration agreement, that the dispute falls within the arbitration agreement, the manner in which the arbitrators were appointed, and the manner of presentation of the evidence; and[4]

2. The substantive portion of the award explaining what, in the arbitrators' view of the evidence, did or did not happen and explaining succinctly why, in the light of what happened, the arbitrators have reached their decision and what the decision is.[5]

U.S. federal courts' expectations of the contents of a reasoned award seem to be less demanding. Recognizing the lack of a formal definition for "reasoned award," courts have conceived a reasoned award as one point on a continuum of detail between the extremes of a "standard award" and "findings of fact and conclusions of law."[6] A standard award requires the least explanation, and simply announces a result without more.[7] "Findings of fact and conclusions of law" require the most explanation and are subject to the exacting standard applied in the U.S. federal court system.[8] The Eleventh Circuit described this continuum as a "spectrum of increasingly reasoned awards."[9] Acknowledging this continuum of detail, the Fifth Circuit explained that a "reasoned award is something short of findings and conclusions, but more than a simple result."[10]

Of course, defining a reasoned award by what it is not or by contrast to the detail of other awards is hardly satisfactory. Recognizing this weakness, the Eleventh Circuit considered a dictionary definition of "reasoned" to describe the elements of a reasoned award as follows:

Strictly speaking, then, a 'reasoned' award is an award that is provided with or marked by the detailed listing *or mention* of expressions or statements offered as a justification of an act — the 'act' here being, of course, the decision of the Panel.[11]

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Relying on this definition, and considering an award that turned primarily upon credibility determinations, *Cat Charter* found that an award which in pertinent part contained only six paragraphs was a reasoned award. *Cat Charter* held that the statement: "[o]n the claim of the Claimants ... for breach of contract ... we find that Claimant ... has proven its claim against [Respondent] by the greater weight of the evidence" was sufficient to understand that the arbitrators found claimants' witnesses were more credible.[12] While recognizing that the arbitrators could have provided more explanation, *Cat Charter* determined that it could not say "this statement is devoid of any statements offered as a justification."[13]

In *Rain CII Carbon LLC v. ConocoPhillips Co.*, the Fifth Circuit considered a party's objection that an award was not reasoned as had been requested by the parties.[14] After explaining that a "reasoned award" is more than a "simple result," *Rain CII Carbon* found that the award at issue "laid out the facts, described the contentions of the parties and decided which of two proposals [in a baseball arbitration] should prevail."[15] It was therefore "at the very least, doubtful that the award is not more than a simple result."[16]

Building on the idea that the forms of arbitral awards exist on a spectrum of required detail, courts have tried to refine the description of the elements of a reasoned award. In *Leeward Construction Co. Ltd. v. American University of Antigua–College of Medicine*, the Second Circuit recognized the holdings of *Sarofim* and *Cat Charter* that a reasoned award is something short of findings of fact and conclusions of law but more than a simple result.[17] Leeward then added that 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. 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.[18]

Based on the foregoing, the courts of the Second Circuit have held that "any award that sets forth the key factual findings supporting its conclusions is a reasoned award."[19]

While courts work toward a clear articulation of the reasoned award standard, parties should keep in mind the importance of not making the court's review more difficult by using even less well understood descriptions for the form of an award. In *Green v. Ameritech Corp.*, the Sixth Circuit grappled with the adequacy of an award where the parties' agreement required "an opinion which explains the arbitrator's decision with respect to each theory advanced by each Plaintiff."[20] *Green* bemoaned the fact that "explain" is not a standard legal term, and therefore the court was left with little guidance as to how to determine the adequacy of the award.[21]

Why Do the Elements of a Reasoned Award Matter?

A clear understanding of the elements of a reasoned award is imperative because an award that falls short of the standard is subject to being vacated by a court. Parties are generally free to decide the form that an arbitration award will take. It is incumbent on the arbitrators to comply with that decision. Arbitrators that fail to provide an award in the required form may be found to have exceeded their authority. As such, an award that fails to follow the form specified in the parties' agreement to arbitrate is subject to being vacated under the FAA.[22]

In *Western Employers Insurance Co. v. Jefferies & Co. Inc.*, the parties had contracted for an award in the form of findings of fact and conclusions of law. The arbitrators rendered an award but did not include findings of fact or conclusions of law. *Western Employers Inc.* held that arbitrators can "exceed their powers" under 9 U.S.C. §10(d) of the FAA when the "arbitrators fail to meet their obligations, as specified in a given contract, to the parties."[23] By failing to comply with the parties' agreement on the form of award, arbitrators "clearly failed to arbitrate the dispute according to the terms of the arbitration agreement."[24] Based on that finding, *Western Employers Insurance* held that the panel exceeded its authority under 9 U.S.C. § 10(d) and ordered that the award be vacated.[25]

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Similarly, in *Vold v. Broin & Associates Inc.*[26] the South Dakota Supreme Court found that an arbitrator prepared and signed a report and scheduling order indicating that the form of the award was to be a "reasoned award."[27] At the conclusion of the arbitration, the arbitrator's award consisted of two pages that merely itemized the dollar amounts allowed for each claim, but gave no reason for each award and no reason for rejecting other claims. The award did not mention any of the relevant contract provisions at issue, cite any law, or discuss any of the evidence admitted during the four-day hearing.[28] As in *Western Employers Insurance*, *Vold* determined that the award exceeded the arbitrator's powers.[29]

While the U.S. federal courts have not placed a high bar for judging what is, or is not, a reasoned award, understanding the standard is important. The consequences to both the parties and the arbitrators of ignoring the required form can be severe.

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[1] *Affymax, Inc. v. Ortho-McNeil-Janssen Pharma., Inc.*, 660 F.3d 281, 285 (7th Cir. 2011)(no rule of law requires arbitrators to render opinions – or having chosen to write an opinion, to discuss every issue that the parties contested); *Sarofim v. Trust Co. of the West*, 440 F.3d 213, 218 (5th Cir. 2006) (arbitrators need not give reasons for their awards).

[2] See e.g. English Arbitration Act of 1996, sec. 52(4) (award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons); UNCITRAL Model Law on International Commercial Arbitration 1985 and amended 2006, art. 31(2) (award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms).

[3] ICDR, Int'l Arbitration Rules, art. 30(1) (tribunal shall state the reasons upon which an award is based); LCIA, Arbitration Rules, art. 26.2 (tribunal shall state the reasons upon which such award is base); UNCITRAL, Arbitration Rules (2010), art. 34(3) (tribunal shall state the reasons upon which the award is based); ICC, Rules of Arbitration, art. 32(2) (award shall state the reasons upon which it is based).

[4] Lord Justice Bingham; Reasons and Reasons for Reasons: Differences Between a Court Judgment and an Arbitration Award, 4 Arbitration International, 141, 149 (1988) (recitals are not essential, but are conventional, and an award "perfected in this way has an air of competent professionalism about it"); Lord Justice Bingham, Differences between a Judgment and a Reasoned Award, 6 Balance, J. of the L. Soc'y N. Territory. 8 (1997); Ray Turner, Arbitration Awards, A Practical Approach, §1.3.1.3, p. 9 (2005)(A common error would be to make recitals too comprehensive and the award unnecessarily prolix. Something wrongly recited can cast doubt upon the quality of the decision itself).

[5] Bingham, supra note 4, at 150; Turner warns that "[w]hat is not required is a blow-by-blow account, nor every element of reasoning." Turner, supra note 4, §1.3.1.4, p. 9 (emphasis original).

[6] *Cat Charter, LLC v. Schurtenberger*, 646 F.3d 836, 844 (11th Cir. 2011).

[7] *Rain CII Carbon, LLC v. ConocoPhillips Co.*, 674 F.3d 469, 474 (5th Cir. 2012); *Cat Charter, LLC*, 646 F.3d at 844.

[8] Id.

[9] *Cat Charter, LLC*, 646 F.3d at 844 (quoting *ARCH Dev. Corp. v. Biomet, Inc.*, No. 02 C 9013, 2003 WL 21697742, at *4 (N.D. Ill. July 30, 2003)).

[10] *Sarofim*, 440 F.3d at 215 n. 1.

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[11] *Cat Charter, LLC*, 646 F.3d at 844 (emphasis original).

[12] *Cat Charter LLC*, 646 F.3d at 844.

[13] *Cat Charter LLC*, 646 F.3d at 845.

[14] *Rain CII Carbon, LLC*, 674 F.3d at 473.

[15] *Rain CII Carbon, LLC*, 674 F.3d at 474.

[16] *Rain CII Carbon, LLC*, 674 F.3d at 474.

[17] 826 F.3d 634, 640 (2d Cir. 2016).

[18] *Leeward Constr.* 826 F.3d at 640; accord, *Sunfed Produce, LLC v. Vega-Tostado*, No. CV-11-393-TUC-DCB, 2017 WL 4876467, at *2 (D. Ariz. Jan. 31, 2017); but cf, *Stage Stores, Inc. v. Gunnerson*, 477 S.W.3d 848, 862-63 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (award remanded to arbitrator even though in general conformity with requirement for a reasoned award as award failed to address a “key defense”).

[19] *Tully Constr. C., Inc. v. Canam Steel Corp.*, 684 Fed.Appx. 24 (2d Cir. 2017); *Leeward Constr.*, 826 F.3d at 640.

[20] 200 F.3d 967, 970 (6th Cir. 2000).

[21] *Green*, 200 F.3d at 975-76.

[22] 9 U.S.C. § 10(d); see *W. Employers Ins. Co. v. Jefferies & Co., Inc.*, 958 F.2d 258, 262 (9th Cir. 1992).

[23] *W. Employers Inc. Co.*, 958 F.2d at 262 (emphasis original).

[24] *W. Employers Ins. Co.*, 958 F.2d at 262.

[25] *W. Employers Ins. Co.*, 958 F.2d at 262.

[26] 699 N.W.2d 482 (S.D. 2005).

[27] *Vold*, 699 N.W.2d at 484.

[28] *Vold*, 699 N.W.2d at 485.

[29] *Vold*, 699 N.W.2d at 488.

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