RULES OF REASON: U.S. COURTS GRAPPLE WITH THE REQUIREMENTS FOR A REASONED AWARD

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Abstract

This note discusses the "reasoned award" requirement, and the standards set forth by U.S. courts governing when an arbitral award is sufficiently "reasoned" where such a requirement applies. The case law in this area is still developing, and U.S. courts, in their respective efforts to refine the governing legal standards, have developed slightly different tests for determining what must be included in a sufficiently "reasoned" award. The most recent decisions addressing this issue are analyzed below.

I. Introduction

Arbitration awards are generally granted great deference by United States ["**U.S.**"] courts. Unless contractually required, arbitrators need not explain their rationale for their award, and U.S. courts have had no hesitation in confirming unreasoned awards.[1] Indeed, the default rule in arbitration is that arbitrators may issue a "*standard*" award (also referred to as a "*general*", "*regular*", or "*bare*" award) that simply announces the result.[2]

Parties may, however, contract around this default rule to require an arbitrator to issue a "*reasoned award*", and this has become fairly commonplace, particularly in large commercial disputes. Contracting parties, particularly those accustomed to judicial opinions in litigation, frequently seek to obtain an award that not only delivers the result but also the arbitrators' reasoning. While, as noted above, general awards are perfectly acceptable under U.S. law, once parties impose a "*reasoned award*" requirement, the arbitral tribunal is obligated to issue such an award. As with every additional obligation that contracting parties impose on arbitrators, a reasoned award requirement can, if not properly fulfilled by the tribunal, give the losing party in the arbitration an additional ground to attack the award in post-arbitral judicial proceedings, and may leave it subject to potential vacatur. As a result, reviewing courts have been forced to develop rules concerning the degree of explanation for a decision that will be required to satisfy a "*reasoned award*" requirement. One prominent U.S. appellate court, the U.S. Court of Appeals for the Second Circuit (which has jurisdiction over New York, and thus is a frequent venue for international arbitration-related proceedings) recently ruled on this question for the first time.

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[1] D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006); *see also* United Steel workers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593, 598 (1960) ("Arbitrators have no obligation to the court to give their reasons for an award."); Tully Const. Co./A.J. Pegno Const. Co., J.V. v. Canam Steel Corp., 2015 WL 906128, ¶ 13 (S.D.N.Y. March 2, 2015), appeal withdrawn (June 15, 2015) [*hereinafter* "Tully Const. Co."].

[2] Tully Const. Co., 2015 WL 906128 ("Accordingly, the default rule in an arbitration in which the parties have not requested a specific form of award is that the arbitrator may issue a 'standard' award."); *See* Cat Charter, LLC v. Schurtenberger, 646 F.3d 836, 844 (11th Cir. 2011))[*hereinafter* "Cat Charter"], (quoted in Tully Const. Co.) ("[I]n a typical arbitration where no specific form of award is requested, arbitrators may provide a 'standard award' and simply announce a result.").

Part II of this note examines the connection between a reasoned award requirement and the grounds for non-recognition set forth in Article V of the New York Convention, and Part III of this note examines a series of U.S. decisions addressing the sufficiency of reasoned awards, concluding that U.S. courts, consistent with their deferential review of arbitral awards, will not readily set aside or refuse to recognize arbitral awards based on an argument that the "*reasoned award*" requirement was not sufficiently satisfied.

II. How Does the Reasoned Award Requirement Affect Enforceability?

For awards rendered in the United States, Section 10(a) of the Federal Arbitration Act ["**FAA**"] provides for vacatur of an arbitration award in four scenarios, one of which is relevant to this topic: a court may vacate an award "*where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made*".[3]

Ultimately, arbitrators derive their powers from the provisions of the parties' agreement.[4] As such, courts have held that "*arbitrators may exceed their power within the meaning of § 10(a)(4) of the FAA if they fail to comply with mutually agreed-upon contractual provisions in an agreement to arbitrate*".[5] For example, if the parties contract for the issuance of the award in a particular form, an arbitrator may exceed his authority by failing to provide an award in the form required by the arbitration agreement.[6] Accordingly, a party who contracts for a reasoned award in a domestic arbitration may seek vacatur of said award under Section 10(a)(4) of the FAA if the arbitrator fails to issue one.

With respect to foreign awards, Section 207 of the FAA stipulates that when a party timely seeks to confirm an award under the New York Convention, *"[t]he court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention*".[7] Article V of the New York Convention provides seven exclusive grounds for denying enforcement of an award.

There do not appear to be any U.S. decisions denying recognition to a foreign arbitral award on grounds that the award was not reasoned, and none of the exclusive grounds for non-recognition set forth under Article V of the Convention appear to provide an adequate vehicle for such an objection. Although Article V(1)(c) pertains to circumstances where an arbitrator has exceeded his jurisdiction, that particular ground for non-recognition is confined to awards that *"[deal] with a difference not contemplated by or not falling within the terms of the submission to arbitration*," or containing "*decisions on matters beyond the scope of the submission to arbitration*". It does not appear to encompass situations where the form of the arbitrator's award does not comply with the parties' agreement.

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3 9 U.S.C. § 10(a)(4).

4 Cat Charter, 646 F.3d 836, 843 (11th Cir. 2011); *See* Szuts v. Dean Witter Reynolds, Inc., 931 F.2d 830, 831 (11th Cir.1991) ("[A]uthority of the arbitrators in an arbitration proceeding is dependent on the provisions of the arbitration agreement under which the arbitrators were appointed.").

5 Cat Charter LLC, 646 F.3d at 843; *See* W. Employers Ins. v. Jefferies & Co., 958 F.2d 258, 260 (9th Cir. 1992) [*hereinafter* "W. Employers Ins."] ("Parties have a right to arbitration according to the terms for which [they] contracted.").

6 Cat Charter, 646 F.3d at 843; *see* W. Employers Ins., 958 F.2d at 260 ("The Ninth Circuit […] vacated an arbitration award that failed to provide 'findings of fact and conclusions of law' as required by the arbitration agreement there at issue.").

7 9 U.S.C. § 207.

Article V(1)(d) permits non-recognition of an award where "*[t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties*," This provision may provide the most appropriate basis upon which to ground an objection to the level of reasoning in an award where the parties have agreed to one, though this strategy has yet to be tested in the U.S. courts.

III. Key Judicial Decisions

Determining whether an award is a "*reasoned award*" is a question of form, not substance.[8] That is to say, whether an award is reasoned does not hinge on if the award is well reasoned or correctly reasoned, but on how the award states its reasoning.

Neither the FAA nor arbitration rules such as the Commercial Arbitration Rules of the American Arbitration Association ["**AAA**"] have defined the form that a reasoned award must take, which places it upon parties to do so themselves.[9] When the parties do not contractually define the term, an arbitrator must determine what constitutes a reasoned award. Predictably, this can cause problems. What an arbitrator thinks is a reasoned award may not be what the parties had in mind. If this difference of opinion occurs, a party may object to the sufficiency of the award at the stage of judicial review. The obligation then falls upon the court to determine if the award issued constitutes a reasoned award.

Few circuit courts have ruled on the definition of a reasoned award. Recently, however, the United States Court of Appeals for the Second Circuit ["**Second Circuit**"] issued a decision in *Leeward Construction* v. *American University of Antigua–College of Medicine* ["**Leeward**"] [10] that establishes a clear standard to determine if an award is a "*reasoned award*". In doing so, the Second Circuit relied heavily on decisions from the Courts of Appeals for the Eleventh and Fifth Circuits, in the cases *Cat Charter* v. *Schurtenberger* ["**Cat Charter**"] and *Rain CII Carbon* v. *Conoco Phillips Co.*["**Rain**"] respectively. This article will analyze the *Leeward* decision as well other cases discussing the requirements for a reasoned award.

A. Cat Charter, LLC v. Schurtenberger

In *Cat Charter*, the Eleventh Circuit laid much of the groundwork for determining what constitutes a reasoned award and the case provides one of the earliest, and most influential, decisions on the issue.[11] Prior to this case, courts used the vague notion that a reasoned award must fall between a standard award and an award that offers legal conclusions.[12] In *Cat Charter*, the Eleventh Circuit determined that more was required to define a reasoned award.[13]

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8 Stage Stores, Inc. v. Gunnerson, 477 S.W.3d 848, 859 (Tex. App. 2015) [*hereinafter* "Stage Stores"].

9 Cat Charter, 646 F.3d at 843.

10 826 F.3d 634, 636 (2d Cir. 2016).

11 *See*, e.g., Wiand v. Schneiderman, 778 F.3d 917, 926 (11th Cir. 2015) (The Eleventh Circuit has already deciphered what constitutes a "reasoned award".); Forrest v. Waffle House, Inc., 2012 WL 1867601, at 5 (M.D. Ala. May 22, 2012); Integrated Const. Enterprises, Inc. v. Bradley Sciocchetti, Inc., 2012 WL 5845616, at 7 (N.J. Super. Ct. App. Div. Nov. 20, 2012).

12 *See*, *e.g.*, ARCH Dev. Corp. v. Biomet, Inc., 2003 WL 21697742, at 4 (N.D. Ill. July 30, 2003) ("Logically, a '[r]easoned [a]ward' is therefore something short of findings and conclusions but more than a simple result. The question then becomes whether the Arbitration Award falls within this somewhat vague range."); *see also* Holden v. Deloitte & Touche LLP, 390 F. Supp. 2d 752, 780 (N.D. Ill. 2005) ("In ARCH Development, Judge Zagel observed that a 'reasoned award' is something short of findings and conclusions but more than a simple result."); Sarofim v.

In *Cat Charter*, the petitioner paid $2 million for a yacht that was never delivered. The arbitration proceeded under the Commercial Arbitration Rules of the AAA ["**AAA Commercial Rules**"] before a panel of three arbitrators.[14] In preliminary proceedings, the parties agreed that the panel would issue a reasoned award. The hearing devolved into a "*swearing match*" whose resolution depended largely on credibility determinations made by the arbitrators.[15]After the hearing, the relevant section of the award issued by the panel consisted of only seven sentences setting forth its holdings.[16] The respondents moved to vacate the award under FAA Section 10(a)(4), on the grounds that the panel exceeded its authority by failing to issue a reasoned award.[17]

First, in determining what constitutes a "*reasoned award*," the Eleventh Circuit found that the term was somewhat "*ambiguous and had been left undefined by the FAA, the AAA Commercial Rules, and the parties' contract*".[18] As a result, the court relied upon common sense and scarce precedent to illuminate this "*critical term*".[19] The court first noted that arbitral award took many forms; the simplest being a "*standard award*" and the most elaborate consisting of "*findings of fact and conclusions of law*". The court held, as had courts before it,[20] that a reasoned award constituted something short of findings and conclusions but more than a simple result.[21]

However, the court found this definition insufficient and in need of elaboration.[22] Relying upon the Webster's Dictionary definition of "*reasoned*," the court determined that "*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 […] the decision of the Panel*".[23]

The Eleventh Circuit determined that the award, consisting of only seven sentences, satisfied this new definition. The defendants argued that the panel's statement that the plaintiffs proved their claims "*by the greater weight of the evidence*"[24] added no explanatory value to the Award and "*work[ed]*

Trust Co. of The West., 440 F.3d 213, 215 (5th Cir. 2006) [*hereinafter* "Sarofim"] ("[A] reasoned award is something short of findings and conclusions but more than a simple result.").

13 Cat Charter, 646 F.3d at 844.

14 *Id.* at 840.

15 *Id.* at 844.

16 Leeward Constr. Co., Ltd. v. Am. Univ. of Antigua-Coll. of Med., 826 F.3d 634, 639 (2d Cir. 2016) [*hereinafter* "Leeward"].

17 Cat Charter, 646 F.3d at 841.

18 *Id.* at 843.

19 *Id.*

20 *See* Sarofim, 440 F.3d at 215 (5th Cir.2006) ("[A] reasoned award is something short of findings and conclusions but more than a simple result.") (quoting Holden v. Deloitte & Touche LLP, 390 F.Supp.2d 752, 780 (N.D.Ill.2005).

21 Cat Charter, 646 F.3d at 844.

22 *Id.*; *see also* Stage Stores, 477 S.W.3d at 859. ("This is clearly more than a standard award. But this does not establish that it was a reasoned award").

23 Cat Charter, 646 F.3d at 844.

24 *Cf.* Cat Charter, 646 F.3d at 844 with Green v. Ameritech Corp., 200 F.3d 967, 976 (6th Cir. 2000) [*hereinafter* "Ameritech Corp."] (The court in *Cat Charter* found that the arbitrator's statement that, "we find that Claimant […] has proven its claim against MTI by the greater weight of the evidence" was a sufficient explanation for the arbitrator's reasoning on the parties' contentions to constitute a reasoned award. In Ameritech Corp., the arbitration agreement required the arbitrator to "explain" his decision, rather than issue a reasoned award. The court found that the arbitrator "explained" his decision sufficiently by stating Green had not met his burden of proving his claims. In both circuits, therefore, when the arbitration agreement requires some explanation of the arbitrator's decision on the parties' arguments, it is sufficient in certain circumstances to state that the burden of proof was met or was not met.).

no transformative alchemy on what is most certainly a 'bare' or 'standard' award".[25] The court held, however, that in *this* context, such a short award could sufficiently meet the standards for a reasoned award. Since the arbitration primarily hung on the credibility determinations by the panel, the court found that the panel gave enough reasoning by finding that, in the "*swearing match*" between the parties, the plaintiffs' witnesses were more credible. In addition, the court found that the award was sufficiently reasoned as it clearly reflected that the panel had weighed the evidence and arguments presented by the parties and made "*determinations of the prevailing party for each claim and the concomitant award of attorney's fees*".[26]

It is important to note that while *Cat Charter* holds that a short, bare-bones award may suffice as a reasoned award if the outcome of the case could reasonably be viewed as turning on witness credibility, *Cat Charter* also insinuates that the flipside is true: when more than witness credibility is at issue, more explanation may be necessary. Therefore, the *Cat Charter* test is still heavily dependent on the facts and context of each case. The level of detail and explanation provided in an award in one set of circumstances could be considered a reasoned award, but not in another.[27]

The decision in *Cat Charter* also did not expressly include in its definition that a reasoned award needs to provide an explanation of the central issues of the arbitration. The Eleventh Circuit did not define which or how many issues must be explained in the award in order to be "*reasoned*". Indeed, the Eleventh Circuit's analysis in *Cat Charter* suggests that an award may still be reasoned even if it does not address key issues.

As this note will discuss later, this proposition stands in direct opposition to the requirement for reasoned awards established in *Leeward*. It will be interesting to note if the Eleventh Circuit modifies its definition to fall in line with *Leeward*'s newer, evolved definition, but as of now, the Eleventh Circuit's definition of a reasoned award is considerably broader than the Second Circuit's.

B. Rain CII Carbon, LLC v. ConocoPhillips Co

Rain was the first Fifth Circuit case to provide a meaningful definition of a reasoned award, as the only prior discussion of the issue in the circuit's jurisprudence occurred in a footnote.[28] *Rain* relied heavily on the reasoning provided in *Cat Charter*, which had occurred a year earlier.

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25 Cat Charter, 646 F.3d at 844.

26 *Id.* ("Further, the Panel provided a detailed explanation for the only conclusion that truly required it—the determination of the prevailing party for each claim and the concomitant award of attorney's fees. The Panel rejected the Plaintiffs' claim for civil theft, but nonetheless declined to award the Defendants attorney's fees on that claim, even though they would appear to be the substantially prevailing party. To clarify, the Panel wrote that the Plaintiffs "raised a claim that had substantial fact and legal support" and that, '[m]ore specifically, we find the issues relating to missing resin and the cost of the skiff presented substantial fact issues raised by Claimants, justifying denial of any attorney's fees for' the Defendants. These statements clearly provide more than a simple result, and give ample justification for the decision of the Panel.").

27 *See also* Stage Stores, 477 S.W.3d at 866 (concurrence). (Cat Charter and Rain CII Carbon demonstrate that the entire set of circumstances surrounding the arbitration must be considered in determining whether an award qualifies as "reasoned.").

28 Rain CII Carbon, LLC v. ConocoPhillips Co., 674 F.3d 469, 473 (5th Cir. 2012) [*hereinafter* "Rain CII Carbon"]; Sarofim, 440 F.3d at 215. ("[A] reasoned award is something short of findings and conclusions but more than a simple result.").

However, *Rain* discussed the other end of the spectrum of the *Cat Charter* analysis and held that a lengthy award does not necessarily mean that it is reasoned.

In *Rain*, ConocoPhillips Co. ["**Conoco**"] challenged the price formula under a supply agreement between itself and Rain CII Carbon, LLC.[29] When the parties were unable to agree on a new formula, Conoco submitted the dispute to arbitration, under the AAA Rules of Arbitration ["**AAA Rules**"].[30] The agreement between the parties also called for the arbitrator to provide a "*reasoned award*".[31] Under the AAA Rules, both sides agreed to a "*baseball arbitration*", in which both sides would submit a proposal and the arbitrator would be constrained to choose one of them.[32] To these ends, the arbitrator requested both parties to submit draft formats for the award.[33]

The arbitrator's award adopted the price formula proposed by Rain, but followed the draft format submitted by Conoco and imported two paragraphs from Conoco's draft.[34] After Rain challenged the inclusion of these two paragraphs, the arbitrator deleted them as clerical errors.[35] Conoco thereafter sought to vacate the award under Section 10(a)(4) of the FAA, alleging that the arbitrator exceeded his powers by failing to select only one proposal from the arbitration submissions and failing to issue a reasoned award.[36]

The Fifth Circuit relied on its prior precedent, *Sarofim* v. *Trust Co. of the W*,[37] that a reasoned award must be "*something short of findings and conclusions but more than a simple result*". Although the Fifth Circuit quoted *Cat Charter*, which also used this same phrasing,[38] it declined to incorporate the second part of the Eleventh Circuit's definition requiring that a reasoned award must have detailed listings or mentions of justifications for the award.

Applying the analysis to the award, the Fifth Circuit found it was "*clear*" that in eight pages – in which the arbitrator laid out the facts, described the contentions of the parties, and decided which of the two proposals should prevail – the arbitrator rendered more than a standard award, which would be a mere announcement of his decision.[39] However, the Fifth Circuit held that, even though it was not a standard award, it did not mean that it was a reasoned one.[40] According to the court, the award still had to be "*sufficiently*" more than a standard award to be a reasoned award.[41]

29 Rain CII Carbon, 674 F.3d at 471.
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.*
34 *Id.*
35 *Id.*
36 *Id.*
37 Sarofim, 440 F.3d at 215.
38 Rain CII Carbon, 674 F.3d at 473.
39 *Id.* at 474.
40 *Id.*
41 *Id.*

In making this determination, the Fifth Circuit then looked to Conoco's assertion that the award was not reasoned because the arbitrator did not sufficiently analyze one of Conoco' key points.[42] However, the court disagreed, finding that the arbitrator had delineated Rain's reasoning on that point, and that the arbitrator's lack of discussion meant that the arbitrator accepted Rain's contention.[43] The court then held that requiring an arbitrator to repeat its reasoning would go against "*the deference owed to arbitral awards and the congressional policy favoring arbitration of commercial disputes*".[44] As such, the court held that it could not vacate the award on grounds that it was not reasoned.[45]

Rain differs in two significant ways from the Eleventh Circuit's decision in *Cat Charter*. First, in contrast to *Cat Charter*, the Fifth Circuit's analysis leaves open the possibility that an award might not be reasoned if the tribunal has not analyzed one of the party's key points. Unlike in *Cat Charter* where the court found this factor superfluous to its determination, the Fifth Circuit felt compelled to examine whether the tribunal had omitted its analysis of Conoco's key arguments, suggesting that evidence that the arbitrator addressed the parties' key arguments may be relevant to the judicial determination of whether the award was sufficiently reasoned.

Second, *Rain* did not fully adopt the definition of a reasoned award set forth in *Cat Charter*. The Fifth Circuit did not adopt the second part of *Cat Charter*'s definition, that 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 […] the decision of the Panel*". More importantly, though, *Rain* did not set forth any other factors in its definition of a reasoned award to fill this void.

However, the Fifth Circuit did provide one addendum in defining a reasoned award: if an award is more than a standard award, it does not mean that it is automatically a reasoned one. Instead, a court must analyze further to determine if the award is "*sufficiently*" more than a standard award. Problematically, though, the Fifth Circuit declined to give guidance as to what "*sufficiently*" means – instead it merely provided that the court must employ deference when evaluating awards and resolve doubts in favor of the arbitration. Ultimately, then, *Rain* does little to further the analysis of the definition of a reasoned award.

C. Leeward Construction v. American University of Antigua–College of Medicine

In *Leeward*, the most recent federal court of appeals case to discuss the definition of a reasoned award, the Second Circuit noted the lack of circuit precedent on this issue and closely examined the analysis of its sister circuits. However, *Leeward* did not fully incorporate the definitions of a "*reasoned award*" provided by either *Rain* or *Cat Charter*. Instead, the Second Circuit set forth its own, unique definition, one that borrowed and elaborated upon that set forth by the Eleventh Circuit in *Cat Charter*.

In September 2008, Leeward Construction Company, Ltd. ["**Leeward**"] and American University of Antigua–College of Medicine ["**AUA**"] entered into an agreement for the

42 *Id.*
43 *Id.*
44 *Id.*
45 *Id.*

construction of a medical school for AUA in Antigua.[46] The agreement provided that any dispute arising from it would be subject to arbitration, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect.[47]

Leeward commenced arbitration to resolve certain disputes that arose between the parties during the construction process. The contract was silent as to the form of the arbitration award, but the arbitral panel nonetheless ruled during a preliminary hearing that it would issue a reasoned award.[48] After taking written and oral testimony, the panel allowed the parties to submit proposed findings of fact and conclusions of law. The panel issued an initial award on June 22, 2012 and a modified award on August 8, 2012.[49]

The award contained the panel's findings that the parties' agreement was a fixed-price contract subject to modification through formal change orders, and that the parties waived the requirement to process additions and deletions through formal change orders.[50] The panel found that Leeward was "*entitled to damages in the amount of EC $232,670.132 for work that was deleted from the [Agreement] and then assigned to Leeward under Separate Contracts, under the bad faith doctrine*,"[51] and that Leeward was entitled to overhead and profit for work that was deleted from the agreement's scope of work and work that was not performed due to changes in the project.[52] The panel also awarded Leeward EC $190,201.19 for unpaid work Leeward had performed that was not part of the original agreement [the "**Change Order Work**"].[53]

Leeward filed a petition to confirm the award in the United States District Court for the Southern District of New York, and AUA cross-petitioned to modify the award. AUA argued that (1) the arbitrators exceeded their powers by failing to issue a reasoned award regarding the Change Order work, under FAA Section 10(a)(4); and (2) the arbitrators committed misconduct by awarding damages pursuant to the doctrine of bad faith because Leeward never relied on the doctrine during the hearing, depriving it of an opportunity to contest on that ground. The district court rejected both arguments, granted the petition to confirm, and denied the petition to modify.[54] The court first noted that a reasoned award was required notwithstanding the fact that one was not called for in the parties' agreement and held that "*once the arbitrators stated in the preliminary hearing order that they would provide a reasoned award and neither party objected, a reasoned award was required*".[55] The court then concluded that the award provided sufficient analysis to constitute a reasoned award, and rejected AUA's objections upon finding "*that there is at least a 'barely colorable justification' for the award rendered and that AUA's challenge therefore fails*". AUA appealed.[56]

46 Leeward Constr. Co., Ltd., 826 F.3d at 636.
47 *Id.*
48 *Id.* at 636-637.
49 *Id.* at 637.
50 *Id.*
51 *Id.*
52 *Id.*
53 *Id.*
54 *Id.*
55 *Id.* at 638.
56 *Id.*

On appeal, the Second Circuit had the opportunity to opine upon what constitutes a "*reasoned award*", and noted that it was an open question in the Second Circuit. However, after surveying district court decisions dealing with the issue, the Second Circuit determined that reasoned awards, when required, must contain "*something short of findings [of fact] and conclusions [of law] but more than a simple result*".[57]

The Second Circuit then looked to its sister circuits for guidance, examining the Fifth and Eleventh Circuits' decisions in *Cat Charter* and *Rain*. In *Rain*, the Fifth Circuit recognized that in a prior opinion, it had used the same description for a reasoned award as something short of "*findings and conclusions but more than a simple result*".[58] In *Cat Charter*, the Eleventh Circuit added to this definition that 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*" for the arbitrators' decision.[59]

The Second Circuit then turned to the decisions of its sister circuits, finding persuasive their holdings that "*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*". However, the court further added that "*[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*".[60]

The Second Circuit found that the award satisfied this standard. While the arbitral award did not provide a detailed rationale for each and every line of damages awarded, it did set forth the relevant facts, as well as the key factual findings supporting its conclusions, and the court found that the award needed nothing more to constitute a reasoned award.[61] The Second Circuit also addressed respondent's argument that the summary nature of the award precluded it from being a reasoned award.[62] While the arbitral tribunal did summarize parts of its decision, the court found that the summary nature of the discussion in the decision merely showed that the panel simply accepted Leeward's arguments on this particular point, much like the Fifth Circuit found in *Rain*.[63] As such, the court denied the request for vacatur.

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57 Leeward, 826 F.3d at 638. (quoting Leeward Constr., 2013 WL 1245549, at 3 (alterations in the original) (quoting Rain CII Carbon, 674 F.3d 469, 473 (5th Cir. 2012)); *see also,* Tully Const. Co., 2015 WL 906128 (quoting Fulbrook Capital Mgmt. LLC v. Batson, 2015 WL 321889, at 5 (S.D.N.Y. Jan. 26, 2015); Carmody Bldg. Corp. v. Richter & Ratner Contracting Corp., 2013 WL 4437213, at 3 (S.D.N.Y. Aug. 19, 2013); Am. Centennial Ins. Co. v. Global Int'l. Reinsurance Co., 2012 WL 2821936, at 8–9 (S.D.N.Y. July 9, 2012).

58 Leeward Constr. Co., Ltd., 826 F.3d at 639.

59 *Id.*

60 *Id.*

61 *Id.*

62 *Id.*

63 Leeward, 826 F.3d at 640; *see* Rain CII Carbon, LLC, 674 F.3d at 474 ("Conoco's argument against the award hinges on the summary nature of the arbitrator's statement that, based upon all of the evidence, he found that the initial price formula should remain in effect. Conoco ignores that the preceding paragraph thoroughly delineates Rain's contention that Conoco had failed to show that the initial formula failed to yield market price, a contention that the arbitrator obviously accepted."); *cf.* Leeward, 826 F.3d at 640 and Rain CII Carbon, *LLC*, 674 F.3d at 474 with Ameritech Corp., 200 F.3d 967, 976 (6th Cir. 2000) (Both Rain and Leeward found it significant that the arbitrators had summarized the parties' arguments and set forth the relevant facts before offering short explanations of their decisions. Similarly, the court in Ameritech Corp. held that the arbitrator had "explained" his decision, finding it significant that the "arbitrator's opinion provided a separate discussion regarding each of the plaintiff's theories and explained, albeit briefly, the reasons for denying recovery on each one." In all three cases, the courts viewed these circumstances as a de facto acceptance of a party's arguments by the arbitrator.).

By requiring that a reasoned award address the central issues of the arbitration, the Second Circuit appears to have departed somewhat from the holdings of its sister circuits. Whereas *Cat Charter* suggests that a reasoned award need not do so, and *Rain* is ambiguous on the issue, *Leeward* definitively states that a reasoned award must set forth its reasoning on all the central issues before it.

D. Stage Stores, Inc. v. Jon Gunnerson

Some state courts have also had the opportunity to opine upon the definition of a reasoned award, and a recent decision of the Texas First Court of Appeals provides a more detailed analysis of why courts should require arbitrators to include such explanation in their reasoned awards.

Stage Stores, a department retailer, entered into an employment contract with an executive employee.[64] The employment contract included an arbitration provision, requiring the parties to submit any disputes relating to the employment contract to arbitration.[65] The arbitration was subject to the Federal Arbitration Act and the AAA Rules.[66] After Gunnerson resigned, Stage Stores refused to pay the benefits available under the contract, and Gunnerson initiated arbitration proceedings.[67] In a preliminary hearing, the parties agreed that the arbitrator would issue a reasoned award.[68]

The arbitrator issued an award four pages in length, containing more than just a recitation of which party won and what the recovery was.[69] Near the beginning of the award, the arbitrator wrote, *"[f]or the reasons set forth herein, the Arbitrator concludes that the [c]laimant has met his burden of proof in part, and failed to meet his burden of proof in other respects, but is entitled to the relief set out below*".[70] The award also contained a statement of jurisdiction, an identification of the parties, a statement of the issues, a recitation of certain procedural facts, the arbitrator's rulings, and the arbitrator's damage awards.[71]

Stage Stores then filed an application to vacate the arbitration award under FAA Section 10(a)(4), on the ground that the arbitrator exceeded her authority.[72] The trial court denied the application to vacate the arbitration award, which Stage Stores appealed.[73]

The court looked to the reasoning in *Cat Charter* and *Rain* for guidance, as Texas courts had not defined "*reasoned award*".[74] After analyzing the logic of *Cat Charter*, and seeing that the court in *Rain* relied heavily upon it as well, the court applied *Cat Charter*'s holdings that: (1) a reasoned award should include a detailed listing or mention of expressions or statements offered to

64 Stage Stores, 477 S.W.3d at 852.
65 *Id.*
66 *Id.*
67 *Id.*
68 *Id.*
69 Stage Stores, 477 S.W.3d at 853.
70 *Id.*
71 *Id.*
72 *Id.* at 852.
73 *Id.*
74 *Id.* at 857.

support the arbitrator's decision; and (2) such an award would constitute something less than findings and conclusions but something more than a statement solely of the result.[75]

Based on this assessment of a reasoned award, the court found that it was "*clearly*" more than a standard award.[76] However, applying the Fifth Circuit's analysis in *Rain*, the court found that "*this does not establish that it was a reasoned award*".[77] Instead, it followed *Cat Charter*'s analysis that "*a reasoned award should include a detailed listing or mention of expressions or statements offered to support the Arbitrator's decision*". Using this definition, the court found that the award contained the same amount of explanation as those upheld in *Cat Charter* and *Rain*.[78] Furthermore, the court found that it "*generally conforms with the requirements for an award to be reasoned*".[79]

Stage Stores argued that the arbitrator did not address one of its key defenses: that Gunnerson failed to provide the requisite notice and opportunity to cure in order to avail himself of the good-cause termination provision.[80] The court analyzed the testimony of the hearing and the terms of the contract and held that Stage Stores "*sufficiently identified and argued the matter in the arbitration proceeding and that the matter was significant enough to merit some reasoning in the award*".[81] However, the majority did not find that the award was not reasoned. Instead, it held that "*the award's failure to provide any reasoning regarding Stage Stores' third contention prevents a determination that the award is reasoned*"[82] (emphasis added). In doing so, they found that there was an ambiguity in the award that needed to be addressed and remanded the award back to the arbitrator for clarification.[83] Therefore, the majority opinion in *Stage Stores*, like *Cat Charter* and *Rain*, expresses that, while courts prefer arbitrators to include an explanation of the parties' key arguments, courts will hesitate to definitively rule that it is not a reasoned award if arbitrators do not. This hesitation can be attributed to the strong policy in favor of deference to arbitral awards.

The decision produced both dissenting and concurring opinions. The dissent argued in favor of affirming the trial court's confirmation of the award, finding that the award was sufficiently reasoned and required no further clarification. The concurrence, however, took an approach more in line with the Second Circuit's reasoning in *Leeward*. The concurring Justice expressed frustration with the vagueness of the definition used by the majority and in *Cat Charter* and believed that the award was not sufficiently reasoned.[84] The concurrence regarded *Cat Charter*'s definition as a good starting point, but believed the definition to be unsatisfactory and not suitable to all circumstances.[85] According to the concurrence, *Cat Charter*'s definition of a reasoned award is over-inclusive because it fails to recognize that an award may implicitly reject a

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75 *Id.* at 858-859.
76 *Id.* at 859.
77 *Id.*; *see* Rain CII Carbon, 674 F.3d at 474 ("[I]t is clear that, in eight pages, the arbitrator rendered more than a standard award, which would be a mere announcement of his decision. Thus, the remaining question is whether the arbitrator's award is sufficiently more than a standard award so as to be a reasoned award.").
78 Stage Stores, Inc., 477 S.W.3d at 860.
79 *Id.*
80 *Id.* at 861.
81 *Id.*
82 Stage Stores, Inc., 477 S.W.3d at 863.
83 *Id.*
84 *Id.* at 864 (J. Brown, concurring).
85 *Id.* at 868 (J. Brown, concurring).

key contention, and arguably requires an arbitrator to address every facially meritless or even frivolous argument that a party may proffer.[86] On the other hand, the *Cat Charter* definition can also, in some circumstances, be under-inclusive because it may be necessary not just to mention but to offer a brief reason for rejecting the losing party's key contentions.[87]

To develop a more comprehensive definition, the concurrence believed it necessary to look at, *inter alia*, the parties' reasons for choosing a reasoned award.[88] According to the concurrence, there are four reasons why a client would require a reasoned award: 1) to help ensure that the arbitrator critically evaluates the parties' arguments; 2) to force the arbitrator "*to put pen to paper*" to help crystalize thinking; 3) to create *"[a] public statement of […] reasons that helps provide the public with the assurance that creates […] trust*" in the proceedings; and 4) parties who know that the arbitrator considered their contentions and understand why the arbitrator rejected them can also modify their future conduct to avoid similar results.[89] An award that offers no explanation, or only bare justification, would accomplish none of these purposes.[90]

The analysis provided in the *Stage Stores* concurrence appears to provide a comprehensive explanation for the requirement set forth in *Leeward* that a "*reasoned award*" must offer some basic explanation for either rejecting the losing party's key contentions or accepting the prevailing party's opposing response.

IV. Conclusion

The Eleventh Circuit proposed a working definition for a "*reasoned award*", one which proved influential to other courts, in part, because of a lack of other precedent. The few other circuits to have directly addressed the issue have evaluated the Eleventh Circuit's definition and used it as a basis for developing their own standards. The Second Circuit's definition in *Leeward*, which is the most recent iteration of the standard initially set forth in *Cat Charter*, also represents the most restrictive. Although the Second Circuit's decision in *Leeward* still acknowledges the need for deference to the arbitrator's decision and appears designed for flexibility in its application, by imposing an additional restriction upon arbitral awards (*i.e.* affirmatively requiring discussion of the parties' "*key issues*") that is not embodied within Section 10 of the FAA, the Second Circuit's definition of a reasoned award arguably comes close to running afoul of *Hall Street* v. *Mattel*,[91] in which the Supreme Court held that the grounds set forth in Section 10 of the FAA are the exclusive grounds for vacating an arbitral award, and may not be modified or supplemented by contract. As other courts attempt to define and clarify the judicial standards governing reasoned awards, arbitration practitioners will remain hopeful that the Second Circuit's decision does not represent the beginning of a slow creep towards a more searching judicial review of arbitral awards. Should a deeper divergence among the circuits emerge, the Supreme Court may ultimately be called upon to resolve it.

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86 *Id.*
87 *Id.*
88 *Id.*
89 *Id.*
90 *Id.*
91 552 U.S. 576 (2008).