

“Avoiding Attack: The Arbitrator’s Guide to Drafting a Bulletproof Reasoned Award,” American College of Construction Lawyers Journal

November 5, 2021

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I. Introduction

Three types of awards¹ are frequently prepared in commercial and construction arbitration proceedings: standard awards, reasoned awards, and awards containing detailed findings of fact and conclusions of law.² This article focuses on drafting reasoned awards which, due to governing standards frequently cause heartburn for arbitrators. Not only are arbitrators³ required to arrive at an equitable result, they must also draft a sufficiently detailed award that can withstand judicial scrutiny. Preparing a reasoned award can be a treacherous process especially after presiding over weeks of testimony, analyzing a mountain of exhibits and considering the legal arguments presented by the parties. Arbitrators must be familiar with the legal standards that determine when a reasoned award can be successfully challenged. This article addresses the steps that enable an arbitrator to prepare a “bulletproof” reasoned award.

II. Legal Standard

The standard of review employed by courts when considering confirmation or a challenge to an award is well established.⁴ A national policy favoring arbitration increases the odds of upholding an award.⁵ Courts⁶ have further recognized that judicial review of an arbitration award is extraordinarily narrow.⁷ An arbitrator’s award will not be disturbed absent a lack of sufficient competent evidence, fraud, partiality or corruption, misconduct or instances where the authority of the arbitrator has been exceeded.⁸ The burden of proof is on the party seeking to vacate the award and any doubt or uncertainty must be resolved in favor of upholding the award. It is noteworthy that “[a] litigant seeking to vacate an arbitration award based on alleged manifest disregard of the law bears a heavy burden as awards are vacated on grounds of manifest disregard only in those exceedingly rare instances where some egregious impropriety on the part of the arbitrator is apparent.”⁹

One court recognized 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.”¹⁰ The court continued to explain

that “while the arbitrator is not obliged to discuss each piece of evidence presented, she or he must at a minimum provide some rationale for the rejection of arguments for liability.”¹¹ Moreover, reliance on the credibility of a witness alone will fail to satisfy the criteria for a reasoned award.¹² Accordingly, something more than a sentence or two explaining the conclusions must be provided by the arbitrator; otherwise the award runs afoul of the applicable standard for upholding a reasoned award.¹³

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