

Smarter Tools Inc. (“STI”) v. Chongqing Senci Import & Exp. Trade Co. (“SENCI”), 57 F. 4th 372 (2d Cir. 2023): U.S. Court of Appeals for the Second Circuit Decides that Remand to an Arbitrator for an Amended Reasoned Award was Appropriate

Eoin Ó Muimhneacháin and Kareem Sule Fuseini

The case, decided before the United States Court of Appeals for the Second Circuit (“the court”) involves an international arbitration award in favor of SENCi against STI for failure to pay for the purchase of thousands of gas-powered generators. There was a disagreement as to whether the generators ordered by STI were to be California Air Resources Board (“CARB”) compliant. STI ceased to trade in SENCi generators in California because they were not CARB-compliant and refused to pay SENCi the \$2,402,680.43 purchase price for the generators ordered and received. An arbitration clause in their contract provided that any dispute arising from the contracts would be resolved by arbitration, to be conducted in New York City under the International Commercial Dispute Resolution Procedure of the American Arbitration Association (“AAA-ICDR Rules”).

SENCi commenced arbitration and STI counterclaimed on the grounds that many of the generators were defective and did not comply with state and federal regulations. They agreed that a reasoned award should be provided by the arbitrator and an award was made in favor of SENCi.

STI, seeking a vacatur of the award, argued that the arbitrator failed to give an initial reasoned award. The district court agreed but rather than vacating the award, remanded it to the arbitrator with instructions to write a reasoned award. The arbitrator then issued a final amended reasoned award which provided the same relief as the original award. STI argued that the district court was wrong to have remanded the unreasoned award to the same arbitrator for an amended award and further, that the arbitrator acted in manifest disregard for the law.

The district court again found in favor of SENCi and stated that it was appropriate under the exceptions to the *functus officio* doctrine and the Circuit’s exceptions to remand to the arbitrator for an amended reasoned award. It also found that the arbitrator did not act in manifest disregard of the law.

Indeed, this was to be expected. It is well-settled under the Circuit’s exceptions to the *functus officio* doctrine that an ambiguous award should be remanded to the arbitrator for clarification. Here, the original award was not a reasoned one as intended by the parties. The amended award provided that clarification to the initial award by detailing the rationale for rejecting the counterclaim. Such clarification was in line with the parties’ intention to receive a reasoned award.

The third Circuit also recognizes certain exceptions under which an award may be remanded to an arbitrator: (1) an arbitrator can correct a mistake that is apparent on the face of his award, (2) where the award does not adjudicate an issue which has been submitted, then as to such issue the arbitrator has not exhausted his function, It remains open to him for subsequent determination, and (d) where the award, although seemingly complete, leaves doubt whether the submission has been fully executed, an ambiguity arises which the arbitrator is entitled to clarify.

The case is significant in confirming that the doctrine of *functus officio*, widely recognized in international arbitration, is not absolute but subject to exceptions. It reinforces arbitrators’ capacity or authority to correct and clarify their decisions in initial awards if the need arises.

In the end, this decision highlights that reconsideration of arbitral awards may be warranted in certain situations to ensure fairness to the parties and the effective enforcement of their agreement to arbitrate. The doctrine of *functus officio* must be approached with some degree of flexibility to achieve the necessary balance of finality and fairness and it should not be applied at all costs if it would result in manifest injustice.

Eoin Ó Muimhneacháin, Phillips Lytle LLP. He can be reached at: emoynihn@phillipslytle.com.

Kareem Sule Fuseini, ABA Fellow, BCom, LLB, LLM, Lecturer of Law, Wisconsin International University College, Accra, Ghana. He can be reached at: kareemsulef@yahoo.com.