VOL. 8, #1, 1/93 - #12-930113-101

PTR v. EVANSTON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -X
In the matter of the arbitration
between P.T. REASURANSI UMUM INDONESIA,

Petitioner,

- against -

EVANSTON INSURANCE COMPANY, UTICA MUTUAL INSURANCE COMPANY, and AMP UNITED,

Respondents.

- -X

MEMORANDUM OPINION AND ORDER

92 Civ. 4623 (MGC)

APPEARANCES:

KIRLIN, CAMPBELL & KEATING
Attorneys for Petitioner P.T. Reasuransi UMUM INDONESIA
14 Wall Street
New York, NY 10005

BY: Mary L. O'Connor
Robert A. Milana

WILSON ELSER MOSKOWITZ EDELMAN & DICKER
Attorneys for Respondents Evanston Insurance Company, Utica Mutual Insurance Company and AMP United
150 East 42nd Street
New York, NY 10017

BY: Edward J. Boyle
Jeffrey A. Sias
John P. McGahey

CEDARBAUM, J.

P.T. Reasuransi UMUM INDONESIA ("PTR") moves to vacate an arbitration award. Evanston Insurance Company and Utica Mutual Insurance Company (collectively, the "Respondents") cross-move to confirm the award.[1]

PTR challenges the arbitration award under 9 U.S.C. § 10 (1947) and 9 U.S.C. § 201, Art. V (1970) on the following grounds:

(1) The composition of the arbitration panel and the arbitration procedure did not comply with the parties' agreement.

(2) The arbitration panel was biased in that it refused to grant PTR an extension, did not send documents filed in the proceeding to PTR's counsel and adopted verbatim respondents' proposed award.

(3) The arbitration panel's refusal to grant PTR an extension of time constituted misconduct.

(4) PTR did not receive proper notice of the appointment of the arbitrators.

Composition of the Arbitration Panel did not Comply with the Parties' Agreement

PTR claims that the arbitration award is attributable to insurance treaties covering 1976 to 1984. While it is impossible

[1] PTR discontinued the action as against AMP United on August 31, 1992.

to tell from the wording of the award which amounts were allocated to which treaties, the demand for arbitration refers to April of 1977. Because the earliest year referred to in the demand for arbitration is 1977, there is no basis for PTR's claim that the 1976 treaty was at issue. Respondents claim that the arbitration award can be attributed only to policy years 1979 to 1984. The relevance of this dispute is that the Panel was properly selected under the 1979 to 1984 treaties, but was improperly selected under the arbitration clauses which PTR claims were contained in the 1977 and 1978 treaties. However, the 1977-78 arbitration clauses to which PTR refers were contained in a reinsurance binding contract, a summary of the treaty language, rather than the actual treaty signed by the parties. At oral argument on October 2, 1992 I asked the parties to submit the arbitration clauses in effect from 1977 to 1984.

[2] Review of the arbitration clauses submitted by the parties reveals that the arbitration agreements in effect from 1977 to 1978 provide the same method for selection of arbitrators as the 1979 to 1984 treaties, and this was the method by which the arbitrators were selected.

Arbitration Proceedings did not Comply with the Parties' Agreement

The agreements provide that the arbitration proceedings are to be conducted pursuant to the rules of the American Arbitration Association (the "AAA"). It is clear that certain of the AAA's procedural rules were not followed. The proceedings were not

filed with the AAA, the required fees were not paid, and proper notice and acknowledgement by the AAA were not given to PTR.

[3] In Compagnie des Bauxites de Guinea v. Hammermills, Inc., No 90 Civ. 0169 (D.D.C. May 28, 1992), the court addressed the issue of whether procedural violations justify setting aside an arbitration award. In that case the parties had agreed to arbitrate according to the rules of the International Chamber of Commerce Court ("ICC"). The plaintiff argued that any procedural violation of ICC rules necessarily violated the agreement of the parties under the Convention. Describing the standard of review to be applied when procedural violations are alleged, the court stated that an award should be set aside based on a procedural violation only if "such violation worked substantial prejudice to the complaining party." Id. at 16. The court considered this interpretation consistent with the "pro-enforcement" bias of the Convention.

There is no dispute that PTR received timely notice of the demand to arbitrate and the selection of respondents' arbitrator. Applying the standard discussed above, the award should not be vacated based on a procedural irregularity because PTR was not "substantially prejudiced" by respondents' failure to comply with the AAA's procedural rules for commencing an arbitration proceeding.

VOL. 8, #1, 1/93 - #12-930113-101

INTERNATIONAL ARBITRATION REPORT

Partiality or Corruption

Partiality will be found where "a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration." Moralite Construction Corp. v. New York City Dist. Council Carpenters Benefits Funds, 748 F.2d 79, 84 (2d Cir. 1984). Generally, partiality requires a personal interest on the part of the arbitrator which might cause him to be biased. Sidarma Societa Italiana di Armamento Spa v. Holt Marine Industries, Inc., 515 F.Supp. 1302 (S.D.N.Y. 1981), aff'd 681 F.2d 802 (2d Cir. 1981); Saichman v. Creative Real Estate Consultants, Inc., 476 F.Supp. 1276, 1284 (S.D.N.Y. 1979).

PTR cites the Panel's failure to grant an extension of the hearing, send copies of documents to PTR's counsel, and the Panel's adoption of respondents' proposed arbitration award as acts showing partiality. PTR does not allege that any of the arbitrators had any prior or current dealings or relationships with respondents. Thus, PTR does not show that the arbitrators had the personal interest required for a showing of a partiality.

PTR was given nine months to prepare for arbitration, and the Panel repeatedly notified PTR of the upcoming hearing. Because PTR did not request an extension until four days before the hearing was scheduled to begin and did not provide any reason for its delay, the Panel's refusal to grant an extension was reasonable. While the Panel did not provide PTR's counsel with copies of documents filed in the arbitration proceeding, it did send these documents directly to PTR. Finally, the Panel did not

adopt respondents' proposed award verbatim. While the two are quite similar, similarity between proposed and adopted awards does not constitute bias. See Fairchild & Co. v. Richmond F.& P. R. Co., 516 F.Supp. 1305, 1313 (D.D.C. 1981).

Failure to Grant an Extension was not an Act of Misconduct

Where there is a reasonable basis for the arbitrator's decision not to grant a postponement, courts are reluctant to interfere with the arbitration award on the ground of misconduct.

After repeated attempts to obtain a brief of PTR's position, the Panel gave the parties a deadline of September 9, one week before the hearing date, to voice any objections. After nine months of silence, PTR requested an extension four days before the hearing. The Panel did not ignore PTR's request, but met by conference call, and decided not to grant an extension. Under these circumstances, the Panel's refusal to grant an extension does not constitute an act of misconduct which justifies vacating the arbitration award.

Lack of Proper Notice of Appointment of the Arbitrator or of the Arbitration Proceedings

PTR correctly asserts that it was not given proper notice of the commencement of the arbitration proceeding or the appointment of the arbitrators as is required under the AAA rules. However, PTR does not contest that it was served with the demand for arbitration and appointment of the arbitrator selected by respondents in a timely manner.

Courts which have addressed the notice provision of Article V of the Convention have concluded that the provision "essentially sanctions the application of the forum state's standards of due process." Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier, 508 F.2d 969, 975 (2d Cir. 1974).

PTR was afforded sufficient notice of the arbitration proceedings and the appointment of arbitrators to comport with due process. Therefore, respondents' failure to comply with the specific AAA rules regarding notice does not justify vacating the arbitration award.

CONCLUSION

Because PTR has failed to establish any ground for vacating the arbitration award, PTR's motion to vacate the award is denied, and respondents' cross-motion to confirm the award is granted.

SO ORDERED.

Dated: New York, New York
December 21, 1992

Miriam Goldman Cedarbaum
MIRIAM GOLDMAN CEDARBAUM
United States District Judge

7