

Reasons in Arbitration Awards: Not Too Little, Not Too Much

By Edna Sussman and Sarah Chojecki

There has been increasing attention in recent years to what is required for a reasoned award. Several decisions that have drawn considerable comment have refused to enforce awards due to insufficient reasoning, highlighting the importance of the issue. An examination of what is required for a reasoned award seems timely.

The reasoning of an award is a cornerstone of international arbitration. Reasoned awards promote fairness, transparency, and enforceability, while safeguarding the integrity of the arbitration process. By providing clear reasons for their decisions, arbitrators help parties understand the outcome, prevent arbitrariness, and enable judicial oversight. This article examines the role of reasoned awards, explores what constitutes sufficient reasoning, and considers how arbitrators can balance the need for clarity with efficiency.

I. The Purpose of Reasons

Reasoned awards serve a critical function in arbitration. In 1987, Lord Justice Thomas Bingham identified five key purposes for judicial reasoning, which apply equally to international arbitration awards. First, reasons ensure that parties understand the basis for the decision. Second, they protect against arbitrary rulings and irrational compromises by the arbitrators. Third, they guide parties and others on future conduct. Fourth, reasons facilitate judicial review by enabling courts to ascertain whether an arbitral tribunal has considered the parties' pleadings and the basis of its decision. Finally, the reasoning process disciplines arbitrators, encouraging logical and robust conclusions.¹

Moreover, reasoned awards enhance the credibility, fairness, and enforceability of the arbitral process, by providing clear guidance and reducing the likelihood of disputes over the award's validity. Arbitrators responding to a survey have emphasized the importance of writing the award with the losing party in mind, ensuring they understand the reasoning, so they feel that they have received a fair hearing.² As Aeschylus noted in the fifth century BC: "the word pacifies the anger."³

II. Defining a Reasoned Award

What constitutes a "reasoned" award varies across jurisdictions, but its core purpose remains the same: to provide the arbitral tribunal's reasoning on the issues raised. Lord Bing-

ham described the essential requirements of a reasoned award in the following terms:⁴

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
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.

A. The U.S. Approach

The FAA does not define a "reasoned award," leaving its interpretation to the courts.⁵ U.S. federal courts adopt a flexible and less demanding standard as they are generally very deferential when reviewing arbitral awards. As the Eleventh Circuit explained in *Cat Charter, LLC v. Schurtenberger*, courts view reasoned awards as existing on a "spectrum of increasingly reasoned awards," requiring more than a "standard award" that merely states the outcome but less than full "findings of fact and conclusions of law."⁶

The Second Circuit, in *Leeward Constr. Co. v. Am. Univ. of Antigua*, also clarified 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."⁷ Similarly, in *Rain CII Carbon, LLC v. ConocoPhillips Co.*, the Fifth Circuit noted that "if Conoco wanted a more thorough discussion of why the arbitrator reached the decision he did, it could have contracted for an award to include findings of fact and conclusions of law. Instead, the parties agreed to a reasoned award, which, according to our case law, is more than a simple result."⁸

Given the importance of assuring enforcement of awards abroad, in international arbitrations seated in the United States arbitrators would be well advised to follow the international approach.



B. The International Approach

The international practice differs and, unlike the United States, in many countries a reasoned award is required for enforcement. International frameworks such as the UNCITRAL Model Law, and the rules of institutions like the ICDR, ICC, and LCIA, require reasoned awards unless the parties agree otherwise.⁹

The New Zealand Court of Appeal's decision in *Ngāti Hurungaterangi & Ors v. Ngāti Waihia* underscores the importance of providing sufficient reasoning in international arbitration awards.¹⁰ This case arose from a dispute over ancestral Māori lands, where the arbitral tribunal delivered a brief, inadequately reasoned award. The Court of Appeal criticized the panel for failing to identify key issues, disregarding significant evidence, and relying on conclusory reasoning.¹¹ It described the award as an "irrational splitting of the difference,"¹² echoing Lord Bingham's critique of arbitrariness. It ultimately set aside the award,¹³ emphasizing that sufficient reasoning is integral to due process and justice.

Although rare, recent successful challenges to the adequacy of reasons provided in arbitral awards on the ground of breach of natural justice in Hong Kong and Singapore are also instructive. In *A v. B and Others* [2024] HKCFI 751, the Hong Kong Court of First Instance refused to enforce an award. The arbitrator recited facts and announced con-

clusions but provided no substantive analysis to explain the reasoning behind the award. The court held that:¹⁴

[O]bjectively read and in the context of the issues raised and submissions and arguments made before the tribunal, the arbitrator failed to adequately explain in the Award the reasons for her conclusions made on the key issues raised in the Arbitration, of the applicable governing law of the Agreements, on the effective date of termination of the Agreements, and on the enforceability or the reasonableness of the Non-Compete Covenant, all of which were disputed by the parties.

The court stressed that "a party reading the award should understand why a central issue in the arbitration was decided against him. In this case, it cannot be said that the Respondents would so understand."¹⁵

In *BZW and another v. BZV* [2022] SGCA,¹ the Singapore Court of Appeal addressed the issue of incoherent reasoning by an arbitral tribunal under § 24(b) of the International Arbitration Act. The respondent argued that the tribunal's reasoning lacked a clear nexus to the parties' submissions, amounting in a breach of the fair hearing rule. The court agreed, finding that the tribunal did little "to connect the proverbial dots."¹⁶ It held that:¹⁷

“Clear reasoning from arbitrators helps parties understand the outcome, protect against arbitrary decisions, and enable effective judicial oversight.”

To the extent that the second argument propounds the well-known principle that a setting aside application is not an appeal and therefore, the court will not interfere even if it considers that, in reaching its decision, the tribunal has made mistakes of facts or law or both, we of course accept it. But that is not what is in issue in this case. The appellants’ argument went far beyond that principle and it was, in fact, quite shocking that the appellants supported the right of a tribunal to be manifestly incoherent in making its decision. The fair hearing principle requires that a tribunal pays attention to what is put before it and gives its reasoned decision on the arguments and evidence presented. If its decision is manifestly incoherent, this requirement would not be met.

III. So How Long and Comprehensive Should the Award Be?

There is no easy answer to the question of how long and comprehensive an award should be. Like so many matters in arbitration, it depends and requires consideration of a variety of factors. As the court aptly put it in the *Ngāti* decision, the level of reasoning required in an arbitration depends heavily on the “context.”¹⁸ While detailed reasoning can promote transparency and fairness, it is not always necessary or efficient. Drafting comprehensive awards requires significant time, and excessively detailed awards can undermine arbitration’s often touted advantages of speed, and cost-efficiency, which users say they want. Conversely, awards that are too sparse risk enforceability challenges. Arbitrators must ensure that the parties feel that their arguments have been heard and addressed while preserving the efficiency of the process and the enforceability of the award.

A checklist of factors to consider in deciding how long and detailed the award may be helpful in providing the guiding context:

1. Terms of the Arbitration Agreement. The agreement may dictate the level of detail expected in the award.

2. Parties’ Expectations and Needs. This includes cultural considerations, the complexity of the arguments, and due process concerns. The reasoning should ensure that the parties feel heard and that their needs—whether for detailed explanations or succinct conclusions—are met.

3. Confidentiality Requirements. Confidentiality clauses may necessitate redactions or supplementary explanations separate from the main award.

4. Court Expectations. Consideration must be given to the standards for court review at the seat.

5. Enforcement Considerations. If the award is likely to be enforced in multiple jurisdictions, it must withstand scrutiny under diverse legal standards.

6. Institutional Expectations and Rules. Institutional rules and guidelines, such as those of the ICDR, ICC or LCIA, often create expectations for the level of detail required of a reasoned award.

7. Significance of the Case. This includes the monetary value of the claims, the nature and complexity of the performance required, and the potential precedential impact of the decision, especially in industries with high market concentration or significant regulatory oversight.

8. Number and Complexity of Issues. The more complex the issues, the more detailed the reasoning should be.

9. Nature of the Evidence. This includes addressing the reliability of the evidence, such as AI-generated data, or evidence of questionable credibility.

10. Consensus in Multi-Member Panels. Reaching unanimity or accommodating dissenting or concurring opinions may influence the level of reasoning.

11. Type of Arbitration. Investor-state arbitrations often require more detailed reasoning due to their public interest implications compared to commercial arbitrations.

12. Industry Norms. What are the expectations in particular industries. For instance, in financial arbitration under FINRA rules, concise awards that avoid elaborate legal analysis are favored.

How one balances these, and any other factors that may be relevant in a particular case, requires the exercise of good judgment.

IV. Conclusion

The reasoning of awards lies at the heart of international arbitration, promoting fairness, transparency, and enforceability. Clear reasoning from arbitrators helps parties understand the outcome, protect against arbitrary decisions, and enable effective judicial oversight. Striking the right balance between thoroughness and efficiency is critical. Awards that are too sparse risk enforceability challenges, while excessively detailed explanations can unnecessarily prolong the issuance of the award and escalate arbitration costs. Arbitrators must draft awards that preserve the integrity of the process while addressing the needs of parties, institutions, and courts. By doing so, reasoned awards uphold arbitration as a legitimate and reliable method for resolving disputes in an increasingly complex global landscape.

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Endnotes

1. Lord Justice Bingham, *Reasons and Reasons for Reasons: Differences Between a Court Judgment and an Arbitration Award*, 4 Arb. Int'l, 141, 141-3, 145 (1988).
2. See Edna Sussman, *The Arbitrator Survey – Practices, Preferences and Changes on the Horizon*, 26 Am. Rev. Int'l Arb. 517 (2015).
3. Quoted in Teresa Giovannini, *Philosophy Can Help Tribunals Draft Awards that Parties Will Accept as Legitimate*, 66 Disp. Resol. J. 78, 90 (May-July 2011).
4. Odean Volker, *What Is a 'Reasoned Award' In International Arbitration?*, Law360 (Mar. 5, 2018) (citing inter alia Lord Justice Bingham, *supra* note 1, at 149-50; Lord Justice Bingham, *Differences Between a Judgment and a Reasoned Award*, J. L. Soc'y N. Territory 8 (1997)).
5. Section 10(a)(4) of the FAA merely states that a district court may vacate an award if, by not providing a reasoned award, "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." For an overview of reasoned awards in the United States see John Burritt McArthur, *The Reasoned Arbitration Award in the United States: Its Promise, Problems, Preparation, and Preservation* (JurisNet LLC 2022).
6. *Cat Charter, LLC v. Schurtenberger*, 646 F.3d 836, 844 (11th Cir. 2011).
7. *Leeward Construction Co., Ltd. v. American University of Antigua-College of Medicine*, 826 F.3d 634, 640 (2d Cir. 2016).
8. *Rain CII Carbon, LLC v. ConocoPhillips Co.*, 674 F.3d 469, 474 (5th Cir. 2012).
9. UNCITRAL Model Law, art. 31(2) ("the award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given."); ICDR International Dispute Resolution Procedures, art. 33(1) ("The tribunal shall state the reasons upon which an award is based, unless the parties have agreed that no reasons need be given.") (2021); ICC Rules of Arbitration, art. 32(2) (2021) ("The award shall state the reasons upon which it is based."); LCIA Arbitration Rules, art. 26.2 (2020) ("The Arbitral Tribunal shall make any award in writing and, unless all parties agree in writing otherwise, shall state the reasons upon which such award is based."). By contrast, Rule R-48(b) of the AAA Commercial Rules and Mediation Procedure (2022) provides that "The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate." Although for international arbitrations governed by the AAA rules, arbitrators typically provide a reasoned award to meet the requirements in other jurisdictions.
10. *Ngāti Hurungaterangi v. Ngāti Wahiao* [2017] NZCA 429 (26 September 2017).
11. *Id.* ¶¶78-103.
12. *Id.* ¶103.
13. *Id.* ¶¶104-10.
14. *A v. B and Others* [2024] HKCFI 751, ¶12.
15. *Id.* ¶20.
16. *BZW and another v. BZV* [2022] SGCA 1, ¶58.
17. *Id.* ¶56.
18. See *Ngāti Hurungaterangi v. Ngāti Wahiao*, *supra* note 10, ¶63.