IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROADWAY PACKAGE SYSTEM, INC.	:	CIVIL ACTION
v.	:	
SCOTT KAYSER, t/d/b/a Quality Express	:	NO. 99-MC-111

M E M O R A N D U M

Padova, J.

Petitioner, Roadway Package Systems, Inc. ("RPS") filed a Motion to Vacate or Modify Arbitration Award on the grounds that the arbitrator exceeded his authority and acted in manifest disregard of the law in finding that RPS wrongfully terminated Respondent's, Scott Kayser ("Kayser"), contract to provide independent linehaul services and in awarding Kayser $174,431.15 in damages. RPS requests that the Court either vacate the award in its entirety or modify the amount of damages awarded. Kayser has filed a Motion to Dismiss Petitioner's Application, contesting any impropriety in the arbitrator's decision or award.

This Court grants Petitioner's Motion and vacates the arbitration award on the grounds that the arbitrator exceeded his authority by resolving an issue that the arbitration agreement did not grant him the authority to consider. Under the parties' contract, the arbitrator's authority is limited to deciding whether RPS' termination of Kayser was in accordance with the

terms of their agreement. The arbitrator instead assessed whether RPS' procedure for notifying Kayser of his performance deficiencies was fair. The fairness of RPS' notification procedures was not within the purview of the arbitrator's grant of authority. Therefore by basing his decision on this issue, the arbitrator impermissibly exceeded his authority.

I. Facts

RPS is a corporation which provides nationwide transportation and delivery services of small packages for industrial and commercial entities. (RPS Br. at 1.) RPS contracts with independent drivers who provide package pick-up and delivery services, as well as with independent linehaul contractors who transport packages between RPS facilities and make limited bulk delivery and pick up for particular RPS shippers and consignees. (Id. at 2.) Kayser is an independent linehaul contractor operating in New Jersey. (Kayser Resp. at 1.)

On February 17, 1996, Kayser and RPS entered into a three year contract, a Linehaul Contractor Operating Agreement ("Agreement"), by which Kayser agreed to provide linehaul services to RPS. (RPS Br. at 2.) The Agreement required Kayser to conform to RPS' specified standard of customer service and operator safety. (RPS Mot. Exh. 2 ¶¶ 1.11 - 1.13.) Although the Agreement's initial term was to be three years, the Agreement

provides for early termination by either Kayser or RPS "if the other party breaches or fails to perform the contractual obligations imposed by this Agreement." (Id. ¶ 9.1(c).)

The Agreement also contains an arbitration clause that provides:

> In the event RPS acts to terminate this Agreement ... and Contractor disagrees with such termination or asserts that the actions of RPS are not authorized under the terms of this Agreement, then each such disagreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award of the arbitrator may be rendered in any court having jurisdiction thereof...

(Id. ¶ 9.3.)

The Agreement limits the authority of the arbitrator as follows:

> The arbitrator shall have the authority only to conclude whether the termination of Contractor was within the terms of this Agreement, to determine damages if required to do so under this subparagraph, and to provide for the division of the expenses of the arbitration between the parties.

(Id. ¶ 9.3(e).)

Should the arbitrator conclude that the termination was not within the terms of this Agreement, then, at the option of RPS:

> (1) the Contractor shall be reinstated, and in that event shall be entitled to damages equal to the arbitrator's determination of what Contractor's net earnings (after payment of all expenses which are borne by Contractor pursuant to this Agreement) would have been during the period between the date of termination and the day of reinstatement; or
>
> (2) Contractor shall nevertheless be terminated, and, in that event shall be entitled to damages equal to the

> arbitrator's determination of what Contractor's net earnings (after payment of all expenses which are borne by Contractor pursuant to this Agreement) would have been during the period between the date of termination to the last day of the term of this Agreement, (without any renewals).

(Id.)

These are the sole damage remedies available to the Contractor; "the Arbitrator shall have no power to award punitive or any other damages." (Id.) Furthermore, the Agreement forbids the arbitrator from modifying any terms of the contract:

> The Arbitrator shall have no authority to alter, amend or modify any of the terms and conditions of this Agreement ..., and further, the Arbitrator may not enter any award which alters, amends or modifies the terms or conditions of this Agreement in any form or manner...

(Id. § 9.3(f).)

On May 4, 1998, RPS terminated its Agreement with Kayser, alleging numerous continuing breaches by Kayser of the required safety and customer service standards. (RPS Br. at 4.) Kayser filed a timely demand for arbitration, seeking total damages of $141,961.40: $129,930.00 in projected lost profits plus $12,031.40 for expenses incurred in purchasing a tractor-trailer at RPS' request. (Kayser Post-Arbitration Br. at 6 - 7.)

The arbitration hearing occurred on April 20 and 21, 1999 before arbitrator William Mechmann. (RPS Br. at 6.) Arbitrator Mechmann found that RPS wrongfully terminated the Agreement because RPS' procedure for dealing with performance deficiencies

did not provide adequate notice to Kayser.[1] (RPS Mot. Exh. 1 at 1.) In exercise of its choice under Section 9.3(e) of the Agreement, RPS refused to reinstate Kayser. Therefore, Arbitrator Mechmann directed RPS to pay Kayser $174,431.15 in damages, $32,469.75 more than Kayser had originally sought.[2] (Id.

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[1]Arbitrator Mechmann's opinion states:

> The main question is - Was the termination by Roadway Package System (RPS) of the Linehaul Contractor Operating Agreement (LCOA) wrongful or proper?
>
> The RPS procedure for dealing with performance by its contractors is commendable. Documentation of breaches by the contractors are written up by Local Managers. This is only verbalized to the contractor. When conditions reach the stage for termination, a recommendation must be forwarded upward for review and approval.
>
> The Claimant independent contractor bought larger equipment at the behest of RPS and took on that financial responsibility, but when his performance was unsatisfactory, he only received verbal warnings until the point of termination which of course, is written. He is aggressive with warehouse people in several locations to get in and out to serve other P&D customers. When his own driver employees were remiss, he replaced them once RPS brought a problem to his attention. He was an aggressive business man in a very competitive environment. Verbal warnings did not persuade him of RPS's [sic] serious concerns.
>
> Based on many years of dealing with industrial relations jurisprudence in American business, I find the RPS system lacking in due process toward the Claimant contractor.
>
> Here the RPS system, which I respect, blinds itself into thinking - as long as we document our side of this business arrangement, that is sufficient. For a reputable business organization that performs an important service in the economy, that is inadequate.

(RPS Mot. Exh. 1 at 1.)

[2]Arbitrator Mechmann's opinion states:

> I conclude that this was wrongful termination by RPS of the LCOA and determine the contractor's earnings (after payment of all expenses which are borne by the contractor) according to LCOA Section 9.3(3). As

at 2.)

RPS now seeks to vacate or, in the alternative, modify Arbitrator Mechmann's award under the Federal Arbitration Act ("FAA"). RPS argues that the award should be vacated on four grounds:

> (1) the arbitrator exceeded his authority by resolving an issue not alleged nor presented to him for review;
> (2) the arbitrator exceeded its authority by ignoring the express provision of the independent contractor agreement relative to its authority and role;
> (3) the arbitrator acted in manifest disregard of the law by injecting employment law principles and the notion of due process into an independent contractor agreement;
> (4) the determination that the Agreement was properly terminated was arbitrary and capricious.

(RPS Br. at 12-13.) In the event that the Court refused to vacate the award, RPS alternatively requests modification of the amount of damages on the grounds that the award is based on a material miscalculation of the proper amount. (Id. at 13.)

Kayser contests RPS' assertion that the FAA governs this Agreement, and instead advocates application of Pennsylvania state arbitration law. (Kayser Resp. at 11.) Kayser further

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> Section 9.3(e) provides, the damage period here runs from 05/21/98, the date of RPS's [sic] termination of the LCOA to 01/25/99, the normal date of termination of the present Agreement (LCOA).
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> Accordingly, I **AWARD** as follows:
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> 1. ROADWAY PACKAGE SYSTEM (RPS) ... shall pay to QUALITY EXPRESS/SCOTT KAYSER ... the sum of ONE HUNDRED SEVENTY-FOUR THOUSAND FOUR HUNDRED THIRTY-ONE DOLLARS AND FIFTEEN CENTS ($174,431.15).

contends that Arbitrator Mechmann's award was properly calculated and within the bounds of the authority conferred upon him by the Agreement. (Id. at 9.)

II. DISCUSSION

A. Choice of Law

The first issue the Court must address is which law to apply, the FAA or Pennsylvania state law. Federal and Pennsylvania law mandate different substantive standards for the judicial review of arbitrator decisions. Apex Fountain Sales, Inc. v. Kleinfeld, 818 F.2d 1089, 1094 (3rd Cir. 1987). RPS argues that the FAA should apply because the contract at issue evidences a transaction involving commerce since it is between diverse parties and involves the interstate transport of goods. Kayser argues that the contract's choice-of-law clause requires application of Pennsylvania law.[3]

The scope of judicial review of an arbitrator's decision is a matter of substantive law. Apex, 818 F.2d at 1094 n.4. Normally, a federal district court exercising diversity jurisdiction must apply the choice of law rules of the forum state when deciding what jurisdiction's laws to apply in that particular case. Klaxon Co. v. Stentor Electric Mfg. Co. 313 U.S. 487, 497, 61 S. Ct. 1020, 1022, 85 L.Ed. 1477 (1941);

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[3]The relevant clause provides: "[T]his Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania." (RPS Mot. Exh. 2 ¶ 16.)

American Air Filter Co. v. McNichol, 527 F.2d 1297, 1299 n.4 (3rd Cir. 1975). Pennsylvania courts generally honor the intent of the contracting parties and will enforce a choice of law provision in a contract. Smith v. Commonwealth Nat'l Bank, 557 A.2d 775, 777 (Pa. Super. Ct. 1989). The Pennsylvania courts have adopted section 187 of the Restatement (Second) Conflicts of Laws which provides that:

> (1) The law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.

Schifano v. Schifano, 471 A.2d 839, 843 n.5 (Pa. Super. Ct. 1984). Giving effect to the choice of law provision would require application of the standard of review for vacating and modifying arbitration awards established under Pennsylvania law.

However, the FAA "creates a body of federal substantive law establishing and regulating the duty to honor an agreement to arbitrate." John Hancock Mutual Life Ins. Co. v. Olick, 151 F.3d 132, 136 (3rd Cir. 1998)(quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp, 460 U.S. 1, 25 n. 32, 103 S. Ct. 927, 942 n.32, 74 L.Ed.2d 765 (1983)). The FAA applies to written arbitration provisions contained in most contracts that evidence a transaction involving interstate or foreign commerce.[4] 9

[4]The FAA excepts from its scope "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1 (1994). Kayser

U.S.C. §§ 1, 2 (1994). Because the Act is premised on Congress' plenary power to establish substantive law under the Commerce Clause and Congress intended to establish uniform federal law over contracts falling within its scope, courts hold that the FAA applies substantively in both state and federal courts to arbitration contracts that are within its reach. See Southland Corp. v. Keating, 465 U.S. 1, 14-16, 104 S. Ct. 852, 860-61, 79 L.Ed.2d 1 (1984); Goodwin v. Elkins & Co., 730 F.2d 99, 108 (3rd Cir.), cert. denied, 469 U.S. 831, 105 S. Ct. 118, 83 L.Ed.2d 61 (1984). The Court of Appeals for the Third Circuit has held that if a contract evidences a transaction involving commerce, then federal law applies in construing and enforcing an arbitration clause, even in diversity cases. Goodwin, 730 F.2d at 108; Becker Autoradio U.S.C. Inc. v. Becker Autoradiowerk, 585 F.2d 39, 43 (3rd Cir. 1978)(quoting Coenen v. R. W. Pressprich & Co, 453 F.2d 1209, 1211 (2d. Cir. 1972 "(o)nce a dispute is covered by the (federal arbitration) Act, federal law applies to all questions of (the arbitration agreement's) interpretation, construction, validity, revocability, and enforceability"). See also Cost Brothers, Inc. v. Travelers Indemnity Co., 760 F.2d 58, 60 (3rd Cir. 1985)(stating "[a]ccordingly, in contracts controlled by the (FAA), questions of the construction of arbitration agreements

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worked for RPS as an independent contractor, not as an employee. (Kayser Br. at 2.) Therefore, their Agreement does not fall into this exception.

and their enforceability are governed by federal substantive law").

The Agreement at issue in this case is one that contracts for the delivery and pick up of packages that have been or will be shipped interstate. Therefore, the contract evidences a transaction involving commerce, and the FAA provides the governing law.

B. Standard of Review

The FAA empowers a district court to vacate an arbitration award in the following circumstances:

> (1) Where the award was procured by corruption, fraud, or undue means.
> (2) Where there was evident partiality or corruption in the arbitrators, or either of them.
> (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient evidence shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
> (4) 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.

9 U.S.C. § 10(a) (1994).

In addition to these statutory factors, a court may vacate an award that is in manifest disregard of the law, Kaplan v. First Option of Chicago, 19 F.3d 1503, 1520 (3rd Cir. 1994); fails the test of fundamental rationality, Swift Indus. Inc. v. Botany Indus., Inc., 466 F.2d 1125, 1131 (3rd Cir. 1972); or, is entirely unsupported by the record, Exxon Shipping Company v.

Exxon Seamen's Union, 73 F.3d 1287, 1291 (3rd Cir. 1996), cert. denied, 517 U.S. 1251 (1996). RPS argues for vacation of the award on the grounds that the arbitrator exceeded his authority and acted in manifest disregard of the law, and that the award is irrational as entirely unsupported by the record. Because the Court finds that the arbitrator in this case exceeded the bounds of his authority, the Court will not address the merits of RPS' other arguments.

The court's role in reviewing an arbitrator's award under the Act is extremely narrow and severely limited. See United Transp. Union Local 1589 v. Suburban Transit Corp., 51 F.3d 376, 379 (3rd Cir. 1995). An award will be vacated only if there is "absolutely no support at all in the record justifying the arbitrator's decision," Id. (quoting News Am. Publications, Inc. v. Newark Typographical Union, Local 103, 918 F.2d 21, 24 (3rd Cir. 1990)). The Court need only find a "colorable justification" to confirm the award. Quaker Sec., Inc. v. Mid-Atlantic Sec., Inc. Civ. No. 96-0151, Misc. No. 96-5, 1996 WL 524094, at *3 (E.D.Pa. 1996), aff'd, 116 F.3d 469 (1997).

C. Exceeding the Scope of Granted Authority

An arbitrator has the authority to decide only those issues that are actually submitted to him. Matteson v. Ryder Sys., 99 F.3d 108, 113 (3rd. Cir. 1996). An arbitrator exceeds his authority when he rules on questions or matters not before him.

Sun Ship, Inc. v. Matson Navigation Co., 785 F.2d 59, 62 (3rd Cir. 1986).

RPS argues that the arbitrator exceeded his authority by resolving issues not presented for review. (RPS Br. at 12.) The Agreement restricts the arbitrator's authority to decide only three issues: (1) to conclude whether the termination of Contractor was within the terms of the Agreement; (2) to determine damages; and (3) to provide for the division of expenses of the arbitration between the parties. (RPS Mot. Exh. 2 ¶ 9.3(e).) The Agreement further states that the arbitrator has no authority to alter, amend or modify any of the terms or conditions of the Agreement, or to enter an order that accomplishes such an alteration. (Id. ¶ 9.3(f).)

RPS argues that the arbitrator improperly framed the issues presented to him as whether the termination was "wrongful or proper," as opposed to whether the termination was authorized under the terms of the Agreement. (RPS Br. at 16.) RPS views the decision as a whole as reflecting the arbitrator's assessment of the fairness of the procedures used to terminate Kayser, rather than of whether the termination was in accordance with the Agreement. If so, then the arbitrator would by his decision alter the Agreement to require termination that is both authorized under the Agreement and procedurally fair. Alteration of the Agreement is an act expressly placed outside his authority

by the arbitration provision.

The Court agrees with RPS. After framing the issue as one of wrongful or proper termination, the arbitrator proceeds to discuss the inadequacy of RPS' procedure for warning independent contractors of performance deficiencies and finally concludes that "the RPS system [is] lacking in due process toward the Claimant contractor." (RPS Mot. Exh. 1 at 1.) The arbitration provision clearly limits the arbitrator's authority to decide only whether the termination was within the terms of the Agreement, not to examine the fairness of the extrinsic procedures by which RPS notifies contractors of problems. By grounding his decision on such considerations of fairness and thereby altering the Agreement to require certain pre-termination procedures, the arbitrator overstepped the bounds of the authority granted to him by the Agreement.

III. CONCLUSION

For this reason, the Court grants Petitioner's Motion and vacates the arbitration award pursuant to 9 U.S.C. § 10(a)(4). An appropriate order follows.

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	:	
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	:	
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SCOTT KAYSER, t/d/b/a Quality Express	:	NO. 99-MC-111

O R D E R

AND NOW, this day of October, 1999, upon consideration of Petitioner's Motion to Vacate or Modify Arbitration Award (Doc. No. 1), Respondent's Motion to Dismiss Petitioner's Application (Doc. No. 2), and Petitioner's Reply thereto (Doc. No. 4), **IT IS HEREBY ORDERED** that:

1. Petitioner's Motion is **GRANTED**;
2. The arbitration award is **VACATED**; and
3. The Clerk shall **CLOSE** this case statistically.

BY THE COURT:

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John R. Padova, J.