

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

COLTEC INDUSTRIES, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
ELLIOTT TURBOCHARGER	:	NO. 99-1400
GROUP, INC. and GENERAL ELECTRIC	:	
CO., INC.	:	
	:	
GENERAL ELECTRIC CO., INC.	:	MISCELLANEOUS ACTION
	:	
v.	:	
	:	
ELLIOTT TURBOCHARGER	:	NO. 99-mc-36
GROUP, INC. and COLTEC	:	
INDUSTRIES, INC.	:	

MEMORANDUM

Giles, C.J.

September ____, 1999

Addressed here are two related actions arising from a commercial arbitration award. In the main civil action, No. 99-CV-1400, Coltec Industries, Inc. (“Coltec”) filed a complaint and a motion to vacate the arbitration award, pursuant to 9 U.S.C. § 10, or in the alternative, to modify and correct the arbitration award, pursuant to 9 U.S.C. § 11. Elliott Turbocharger Group, Inc. (“Elliott”) filed a cross-motion to confirm the same arbitration award. In a miscellaneous action, No. 99-mc-36, General Electric Co., Inc. (“GE”) moved to confirm and stay the arbitration award as to Elliott. For the reasons that follow, this court confirms the award of the arbitrator in full. Accordingly, Coltec’s motion to vacate in No. 99-1400 is denied, Elliott’s cross-motion in No. 99-1400 is granted, and GE’s motion in No. 99-mc-36 is denied as moot.

Factual Background

In 1993, GE and Elliott entered a Purchase Agreement (“Agreement” or “Purchase

Agreement”) in which Elliott agreed to produce and sell to GE ALCO Turbochargers and related renewal parts. Among the key provisions of the Agreement was Elliott’s promise not to sell products other than to GE or to some party with GE’s consent. (Agreement, Part I.C). The Agreement also provided that any controversy arising under its terms would be submitted to arbitration. (Agreement, Part VII). The arbitration provision required that an arbitrator decide the matter “in accordance with the terms of this Agreement” and expressly denied to the arbitrator the “power or right to change, modify, add to or subtract from” the provisions of the Agreement. (Agreement, Part VII.E). However, the Agreement granted the arbitrator power to interpret the contract in accordance with Pennsylvania law if the answer to a dispute required such an interpretation. (Agreement, Part VII.E).

Elliott and GE also entered into a Technical Assistance and Licensing Agreement relating to GE ALCO Turbocharger Factory Rebuild Services for the U.S. Government’s Basic Ordering Agreement (“BOA”). This allowed Elliott to repair ALCO turbochargers used by the United States government, utilizing technical information from GE, in exchange for royalty payments to GE for any sale of ALCO products.

The Agreement expired by its own terms in February 1996. Thereafter, the parties continued their contractual relationship on a month-to-month, quote-to-quote basis, in accordance with their normal business practices. During the continued life of the Agreement, Elliott amassed a large amount of excess inventory such that by June 1996 it totaled about \$1 million in finished parts. In early 1997, GE and Elliott met to negotiate an orderly termination of their business relationship. These negotiations resulted in the signing of a Memorandum of Understanding (“MOU”), intended to provide a framework and guidelines for that termination.

The MOU provided that the parties would attempt to dispose of excess inventory through sales to GE and other customers of GE's choosing prior to May 1, 1997. The MOU then provided that after May 1, all inventory remaining and not sold would be considered "excess inventory." The parties agreed that, upon identification of that excess, they would negotiate a "mutually agreeable settlement to dispose of the identified excess inventory." No price term was specified or agreed, but was left to future negotiations of that "mutually agreeable settlement." However, the MOU stated that "[i]n principle, [GE] agrees to acquire and or arrange for the acquisition of one hundred (100%) percent of the identified excess inventory . . . over a mutually agreeable period of time." The MOU also recognized Elliott's ongoing commitment to "take all reasonable actions to ensure that there is no disruption in filling orders" for the United States under the BOA.

In or about the spring of 1997, GE and Coltec began discussions regarding the sale of GE's entire ALCO product line to Coltec, which resulted in a completed sale in September 1997; GE and Elliott delayed negotiations for the purchase of the excess inventory until completion of that sale. GE's obligation to Elliott regarding the purchase of the excess inventory was a key point in the negotiations between GE and Coltec. A representative of Coltec reviewed the MOU and a list of the Elliott inventory, discussed GE's conceded obligation to purchase 100% of that excess inventory, and agreed to assume aspects of the inventory obligation. Coltec assumed three paragraphs of GE's obligations under the MOU, including the excess inventory purchase provision, and agreed to indemnify GE for any liability under the MOU.¹ Elliott then began

¹ Coltec subsequently sold the ALCO turbocharger product line to Globe Turbochargers, Inc., but Globe did not assume the MOU.

negotiations with Coltec regarding disposition of the excess inventory. Coltec offered to purchase a portion of the inventory for \$300,000 and Globe Turbochargers, Inc. (“Globe”) offered to purchase all the excess for \$400,000; Elliott rejected both of these offers as being too low.

In May 1998, Elliott commenced arbitration against GE and Coltec, pursuant to Part VII of the Purchase Agreement, arguing that one or both was liable in an amount in excess of \$1.4 million for the cost of the excess inventory. GE and Coltec asserted cross-claims against each other and Coltec asserted counterclaims against Elliott. On February 17, 1999, the arbitrator ruled as follows: 1) Elliott’s claim against GE for breach of the Purchase Agreement and the MOU was allowed for \$ 1,497,187.27; 2) GE’s indemnification cross-claim against Coltec was allowed for the same amount; 3) Coltec’s counterclaim against Elliott was allowed in the amount of \$ 64,969.58 for certain royalties earned; 4) Coltec’s counterclaim against Elliott for the return of certain technical information was denied; 5) Coltec’s cross-claim against GE was denied. (Arb. Award ¶¶ 1-5).

The arbitrator explained his conclusions in a short written opinion, finding that the MOU was a binding negotiated agreement between GE and Elliott and “was based on careful negotiations and the mutual needs” of the parties. (Arb. Op. at 1). The arbitrator reasoned that GE needed a continued supply relationship and Elliott needed a commitment from GE to purchase the excess inventory. GE therefore was bound to honor that commitment, although it was clear that there was no agreement as to price. The absence of a specific price term obligated GE to “pay a reasonable price under all the circumstances, both those relating to the prior relations between the parties and the knowledge of the relationship that each possessed, as well

as the legitimate expectations of the supplier.” (Arb. Op. at 1-2). The arbitrator concluded that the reasonable price was Elliott’s cost figures, plus some compensation for lost profits for Elliott’s extended holding of the excess inventory due to GE’s failure to perform, which compensation the arbitrator set at 9%. The arbitrator further stated that the award could have been made against Coltec, but in order to create a less complicated award structure, he granted Elliott an award as against GE and granted GE an award as against Coltec for the same amount on the indemnification cross-claim. (Arb. Op. at 2).² The arbitrator further found it “clear” based on the hearing that Elliott was obligated to make royalty payments directly to Coltec. (Arb. Op. at 2-3). Finally, the arbitrator permitted Elliott to maintain certain technical information, based on a finding that Elliott appeared to be permitted to continue to supply agencies of the United States under the BOA and thus needed the technical information for that purpose. But Elliott would be permitted to maintain that information only until its obligations under the BOA have ceased, at which time such technical information must be returned to Coltec “forthwith.” (Arb. Op. at 3). The arbitrator concluded by stating that the opinion and award “fully disposes of the issues,” but that he was “prepared to provide any clarification if requested by the parties to ensure that the substantial justice accomplished by the award can be fully and fairly implemented.” (Arb. Op. at 3).

Attempts to arrange enforcement of the arbitration awards led to the instant related actions. GE had sought to arrange an agreement in which Elliott would receive the \$1.4 million award directly from Coltec, less the amount Elliott owed to Coltec for royalties. However,

² In effect, if not as a matter of law, Coltec would be paying the award of \$ 1.4 million to Elliott.

Elliott sought payment directly from GE under the award, while Coltec indicated its intent to seek clarification, modification, or vacation of the award, either from the arbitrator or from the district court. Fearing a situation in which it was forced to pay Elliott the full award amount only to have Coltec successfully reduce its obligation to GE, GE filed the miscellaneous action, asking this court primarily to stay the arbitration award against it and in favor of Elliott until any clarifications or modifications to the entire award had been made. Soon thereafter, Coltec commenced the main civil action seeking to vacate the arbitration award or in the alternative to modify and correct the award. Elliott filed a cross-motion to confirm the award.

Discussion

Standard of Review

Our review of a challenged arbitration award is controlled by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, which empowers a district court to vacate an arbitration award in any of 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).

Judicial review of an arbitration award is substantially limited to the four grounds listed in § 10(a) and to the concept of “manifest disregard” of the law. See Shearson/American Express, Inc. v. McMahon, 482 U.S. 220, 259 (1987) (Blackmun, J., concurring in part and dissenting in part).

This 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 (3d Cir. 1995); Mutual Fire, Marine & Inland Ins. Co. v. Norad Reinsurance Co., Ltd., 868 F.2d 52, 56 (3d Cir. 1989); Amalgamated Meat Cutters & Butcher Workmen of North America v. Cross Bros. Meat Packers, Inc., 518 F.2d 1113, 1121 (3d Cir. 1975). An award will be vacated only if there is "absolutely no support at all in the record justifying the arbitrator's determinations." United Transp., 51 F.3d at 379 (quoting News America Publications, Inc. v. Newark Typographical Union, Local 103, 918 F.2d 21, 24 (3d Cir. 1990)).

The sole question for this court is whether the award rationally can be derived from the agreement and the submissions of the parties; only if the terms of the award are "completely irrational" will the award be subject to judicial revision or vacation. Mutual Fire, 868 F.2d at 56 (quoting Swift Indus. v. Botany Indus., 466 F.2d 1125, 1131 (3d Cir. 1972)). The court need only find a "colorable justification" to confirm the award. Quaker Securities, Inc. v. Mid-Atlantic Securities, Inc., Civ. No. 96-0151, Misc. No. 96-5, 1996 WL 524094, *3 (E.D. Pa. 1996) (Giles, J.), aff'd mem., 116 F.3d 469 (1997). In considering the arbitrator's interpretation of the contract, the question becomes whether "the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context and any other indicia of the parties' intention." Exxon Shipping Co. v. Exxon Seamen's Union, 73 F.3d 1287, 1295 (3d Cir.) (citations and internal quotation marks omitted), cert denied, 517 U.S. 1251 (1996).

Importantly, this court does not sit in review of the merits of the arbitral decision, News America, 918 F.2d at 24 (citing United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36 (1987)), or to hear claims of factual or legal error by an arbitrator. Tanoma Mining Co., Inc. v.

Local Union No. 1269, 896 F.2d 745, 747 (3d Cir. 1990); see also Wilko v. Swain, 346 U.S. 427, 436-37 (1953) (“[T]he interpretations of the law . . . are not subject, in the federal courts, to judicial review for error in interpretation.”). Thus, this “court does not review the award to ascertain whether the arbitrator has applied the correct principles of law.” News America, 918 F.2d at 24 (citing United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 598 (1960)); see also Exxon Shipping Co., 73 F.3d at 1295 (“[W]e do not review for legal error.”). Nor may this court reweigh the evidence or question the credibility of the testimony of a particular witness in the guise of determining whether the arbitrator exceeded his authority or manifestly disregarded the law. See Mutual Fire, 868 F.2d at 56 (“It is not this Court’s role . . . to . . . reexamine the evidence.”); Quaker Securities, 1996 WL 524094, at *3 (“The district court may not reweigh the evidence . . . to decide whether to vacate an award.”). Nor may this court overrule the arbitrator because it disagrees with the arbitrator’s construction of the contract or because it concludes that its construction of the contract is better than that of the arbitrator. United Transp., 51 F.3d at 379 (citing News America, 918 F.2d at 24). Neither mere factual or legal error nor disagreement with the arbitrator’s interpretation of the language of the contract is grounds for reversal. See Misco, 484 U.S. at 38. As the third circuit has cautioned, it “should be clear” that the standard of review is a “singularly undemanding one.” News America, 918 F.2d at 24.

Review of the Arbitrator’s Award

Coltec argues that the arbitration award should be vacated both under the exceeding arbitral authority prong of § 10(a)(4) and under the principle of manifest disregard of the law. As an initial and general matter, the merits of Coltec’s arguments are dubious in that it appears that

Coltec overestimates the scope and strength of this court's review. "Manifest disregard of the law" means more than error or misunderstanding with respect to the law. See Aetna Cas. and Sur. Co. v. Dravo Corp., Civ. No. 97-149, 1997 WL 560134, *1 (E.D. Pa. 1997) (Brody, J.). Rather, that standard "encompasses situations in which it is evident from the record that the arbitrator recognized the applicable law, and yet chose to ignore it." Id. (citations omitted). Other courts have held that the "manifest disregard" principle means that the correct legal standard must have been so obvious that the typical arbitrator would readily and instantly have perceived it, the arbitrator must have been subjectively aware of that standard, and he must have proceeded to ignore that standard in fashioning the award. See Raiford v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 903 F.2d 1410, 1412 (11th Cir. 1990) (citation omitted).

Similarly, an arbitrator exceeds his authority only if he rules on questions or matters not before him. See Sun Ship, Inc. v. Matson Navigation Co., 785 F.2d 59, 62 (3d Cir. 1986). Simply reaching a particular result based on his view of the contract and the evidence submitted, even if this court might reach a different result from that same evidence, does not mean that the arbitrator exceeded his authority. In arguing repeatedly before this court what the evidence, even the overwhelming evidence, was in this case, Coltec essentially asks this court to review and reweigh the sufficiency of the evidence in support of the arbitrator's findings and legal conclusions in the award and reach a different result. But as explained, supra, this court explicitly is precluded from doing so. See Mutual Fire, 868 F.2d at 56; Quaker Securities, 1996 WL 524094, at *3.

Although there is some slight disagreement on this point, this court takes the view that the failure of the arbitrator to explain his reasoning does not support the conclusion that he

manifestly disregarded the law. See O.R. Securities, Inc. v. Professional Planning Assocs., Inc., 857 F.2d 742, 747 (11th Cir. 1988); Aetna, 1997 WL 560134, at *2; but see Halligan v. Piper Jaffray, Inc., 148 F.3d 197, 204 (2d Cir. 1998) (holding that the absence of reasoning can be taken into account where the reviewing court is inclined to find manifest disregard and any explanation would strain credulity), cert denied, 119 S. Ct. 1286 (1999). Generally, there is no requirement that an arbitrator expressly explain his reasoning. Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 31 (1991) (“[A]rbitrators often will not issue written opinions.”); Aetna, 1997 WL 560134, at *2. Accordingly, it is not reasonable to attempt to draw conclusions or inferences from an arbitrator’s not doing something that he was not obligated to do.

Finally, it is important to explain the procedural posture of these motions. Coltec is the only party challenging any aspect of the arbitrator’s award, particularly the primary award of \$1.4 million in Elliott’s favor. This is because Coltec, by virtue of the arbitrator’s decision on the indemnification claim, is, de facto, the party that must pay that award. GE has taken a primarily passive role in this case, seeking only to ensure that it receives from Coltec whatever it is obligated to pay to Elliott. Elliott has not challenged the finding that it must make royalty payments of approximately \$64,000 to Coltec. Thus, the portions of the award at issue before this court are 1) Elliott’s claim under the Purchase Agreement and MOU that Coltec must pay pursuant to the indemnification claim and 2) the denial of Coltec’s counterclaim for the immediate return of the relevant technical information. In all other respects, the award is unopposed.

Enforceability of the MOU

Coltec's main argument is that the arbitrator manifestly disregarded the law and exceeded his authority in finding the MOU to be an enforceable contract. Coltec argues that the MOU does not satisfy the Pennsylvania Statute of Frauds, which provides that a contract for the sale of goods for the price of \$500 or more is unenforceable unless there is some writing to indicate that a contract for sale has been made and signed by the party against whom enforcement is sought. 13 Pa. C.S. § 2201(a). To satisfy the statute, the writing must meet three requirements: 1) it must be signed by the party to be charged; 2) it must evidence a contract for the sale of goods; and 3) it must specify a quantity term. Eastern Dental Corp. v. Isaac Masel Co. Inc., 502 F. Supp. 1354, 1353 (E.D. Pa. 1980) (Luongo, J.); 13 Pa. C. S. § 2201 cmt. 1.

Coltec argues first that the MOU is unenforceable under the third requirement in that it fails to specify a quantity term. However, GE agreed in principle in the MOU that it would acquire or arrange the acquisition of 100% of the identified excess inventory. This language is plain and has to be given its plain meaning: GE, and thus Coltec by virtue of its having assumed this obligation, agreed to purchase 100% of whatever excess inventory was identified after May 1, 1997. There was evidence adduced in the arbitration that this interpretation reflected the understanding of GE and Coltec--that GE indeed had committed itself to purchasing 100% of the excess inventory and that Coltec was assuming such a commitment-- during their negotiations leading to the sale of the ALCO turbocharger line in September 1997. It was neither unreasonable nor irrational for the arbitrator to conclude that "all of the inventory" was a sufficiently specific quantity term, agreed to and understood by the contracting parties, for purposes of satisfying § 2201(a).

Second and related, Coltec argues that the arbitrator exceeded his authority in

determining the amount of that excess. Coltec argues that the arbitrator ignored the word “identified” in the MOU in concluding that Coltec was obligated to purchase all the excess inventory, not only some specifically identified portions. Coltec also argues that some portion of the inventory was added after the execution of the MOU. Taking the second point, in addition to the provision for the purchase of the excess inventory, the MOU also obligated Elliott to “take all reasonable actions to ensure that there is no disruption” in filling orders under the BOA, which actions included continuing to manufacture inventory. Reading the two provisions of the MOU together, the arbitrator reasonably could have concluded that later-acquired inventory was part of GE’s purchase obligation. Similarly, because the continued production of inventory was necessary under the terms of the MOU, the arbitrator could have concluded that the inventory produced to fill BOA commitments was sufficiently identified as to be included in the phrase “identified excess inventory.” In short, the arbitrator interpreted the contract in a reasonable manner and in a way that duly regarded the contractual language and terms; that is sufficient for confirmation of the award, given the “singularly undemanding” scope of this court’s review.

Price Awarded

The arbitrator, expressly finding that there had been no agreement on the price to be paid for the excess inventory, awarded a “reasonable price under all the circumstances, both those relating to the prior relations between the parties and the knowledge of the relationship that each possessed, as well as the legitimate expectations of the supplier.” (Arb. Op. at 1-2). The arbitrator set that reasonable price at the cost of the excess inventory as established by Elliott’s cost figures, plus compensation for the extended holding due to GE’s non-performance, which the arbitrator assessed at 9% of the cost. Thus the award of more than \$1.4 million to Elliott

from GE and in the same amount to GE from Coltec on the indemnification cross-claim.

Under Pennsylvania law, where the parties have established a written agreement that satisfies the Statute of Frauds but does not indicate an agreement on price, “the price is a reasonable price at the time for delivery.” 13 Pa. C.S. § 2305(a). It is true that under ordinary circumstances the reasonable price will be the market price for particular merchandise. Kuss Machine Tool & Die Co. v. El-Tronics, 143 A.2d 38, 40 (Pa. 1958). But Kuss establishes that in some circumstances, reasonable price could be the cost of manufacture plus some additional amount for profit. Id. Thus the arbitrator, given his contractual power to interpret the agreement in accordance with Pennsylvania law, was not bound to derive the reasonable price only from the fair market value of the goods; he could use any formula or methodology to arrive at a price, so long as the formula and result are reasonable. The arbitrator understood Pennsylvania law to permit him to consider various factors and use a different formula for finding an agreement as to price. His doing so could not be said to constitute a manifest disregard of the law.

The arbitrator reviewed the prior relations between the parties, including prior negotiations over the excess inventory, their respective knowledge of the relationship, and Elliott’s legitimate expectations as supplier. There was evidence adduced at the arbitration that suggested that Elliott and GE indeed had discussed setting a price centered around Elliott’s cost, plus some mark-up, as opposed to trying to establish a market value for the inventory. A negotiations representative of Elliott had suggested a mark-up of 30% to 35%, a figure that GE immediately rejected. But a GE representative did testify to his belief that a mark-up of 4% to 5% “might” be reasonable, although GE had reserved the right to negotiate on that point. The arbitrator’s award suggests that he concluded based on this evidence that the parties’ reasonable

expectations as to a “mutually agreeable settlement” on the price term were for cost plus some mark-up that would reasonably compensate Elliott for the delay in the purchase of the excess inventory pursuant to the MOU and the additional costs it incurred in having to maintain the inventory for a period of almost two years. Coltec argues that the overwhelming evidence supports the use of market price under the contract, that cost was not a fair substitute for market price, that Elliott’s costs were out of line, and that a market price could have been determined and applied. Even assuming all that to be true, it is beside the point. This court cannot and will not re-examine or re-weigh the evidence to determine if it would have reached a different result in setting a reasonable price term. See Mutual Fire, 868 F.2d at 56. This court’s “singularly undemanding” inquiry ends once it is clear that the arbitrator looked to the parties’ prior discussions as to price, determined that the parties did have some discussions about cost-plus-mark-up as a proper price term, and established a reasonable mark-up based on that evidence.

Coltec raises a second argument as to the price awarded, claiming that the arbitrator manifestly disregarded the law in awarding Elliott as damages the full price of the inventory, pursuant to 13 Pa. C.S. § 2709(a),³ rather than the difference between the contract price and the market price at the time of tender, pursuant to 13 Pa. C.S. § 2708(a).⁴ Coltec argues that § 2709 does not apply, because there was no evidence that Elliott had attempted to sell any goods or that

³ Section 2709(a) provides that “[w]hen the buyer fails to pay the price as it becomes due the seller may recover . . . the price of . . . (2) goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price.” 13 Pa. C.S. § 2709(a)(2).

⁴ Section 2708(a) provides that, except in certain situations not applicable here, “the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price.” 13 Pa. C.S. § 2708(a).

such efforts had been unavailing, which is prerequisite for the application of that provision.

Elliott argues that it was contractually prohibited from selling the goods to anyone other than GE or Coltec or some other purchaser to which GE or Coltec consented.

This court rejects Coltec's argument. It was not clear that § 2708 governed this situation, or that the arbitrator knew that § 2708 governed and then chose not to apply it, so as to create a situation that satisfies the manifest disregard standard as described, *supra*. See *Aetna*, 1997 WL 560134, at *1. There is nothing in the record to show that the arbitrator subjectively understood that § 2708 obviously was the correct provision and chose to ignore it. See *Raiford*, 903 F.2d at 1412.

Further, Elliott is correct that the plain language of the Purchase Agreement prohibited it from selling this merchandise to anyone other than GE (or Coltec) or someone of their choosing. The arbitrator apparently interpreted that contractual restriction to satisfy the "unable to resell" requirement of § 2709(a)(2). Coltec has not provided authority showing that legal conclusion was manifestly incorrect. It therefore was reasonable for the arbitrator to award the full contract price, based on the reasonable price term established in the arbitration. The arbitrator, upon examining the contract and the evidence, chose between two arguably applicable legal principles and reached a legal conclusion that is certainly at least colorably justified and cannot be overturned by this court.

Return of Technical Information

Coltec also argues that the arbitrator erred in denying its motion for the immediate return of certain technical information, based on a finding that "it appears that Elliott is permitted to continue to supply certain agencies of the United States under an existing Basic Ordering

Agreement and is permitted to use the technical information for that purpose.” (Arb. Op. at 3). Coltec argues that no evidence in the record supports that finding. Putting aside the restriction on this court’s ability to re-examine the evidence, see supra, there was evidence in the record that during negotiations between Elliott and GE, GE was concerned that removing all technical information from Elliott would prevent Elliott from carrying out its repair obligations and would result in GE being in default. This lends sufficient support to the arbitrator’s conclusion that Elliott could use the technical information to carry out the obligations under the BOA and that those obligations were ongoing. Further, Elliott has been permitted to maintain the technical information only as long as its obligations under the BOA remain; thus this portion of the arbitrator’s award will expire by its own terms when those obligations cease, at which time Elliott must return such technical information “forthwith.” This portion of the award therefore does not require reversal.

Modification, Correction, or Clarification of the Arbitrator’s Award

At the close of his opinion, the arbitrator offered to provide clarification of the award at the request of any of the parties. However, this court rejects the notion that this undercuts any confidence in the clarity of the arbitrator’s award. The fact that the arbitrator offered the opportunity for such clarification does not suggest that he regarded his award as unclear.

As for correction or modification of the award, that is permitted by 9 U.S.C. § 11 in three narrowly defined circumstances: a) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property; b) where the arbitrator awarded on something not submitted to him, unless the matter does not affect the merits of the decision; or c) where the award is imperfect in form, not affecting the merits of the controversy.

Nothing indicates that the award in this case falls into any of those categories.⁵ Coltec's challenges have been to the merits of the controversy and therefore are governed only by § 10.

GE's Motion to Stay and Confirm

GE has taken a neutral position as to the merits of the arbitration award in favor of Elliott. Its only concern in this case apparently has been that the amount of the award in its favor against Coltec on the indemnification claim be the same as the amount of the award in favor of Elliott and against GE. GE filed the miscellaneous action in order to protect its interest and ensure that it would not face the situation in which it paid the full amount to Elliott only to have this court reduce the award to it as against Coltec.

For the reasons described above, this court has confirmed the award in Elliott's favor both as to the challenged provisions and as to the other provisions that went unchallenged. GE's interests therefore have been satisfied--it owes in excess of \$1.4 million to Elliott and Coltec owes GE that same amount--and its concerns in bringing the miscellaneous action have been resolved. Its motion therefore is moot and will be denied on that ground.

⁵ Coltec argues that the arbitrator's award covers some inventory of which Elliott subsequently disposed. Elliott has represented to the court that it would provide a credit for any such sales against the judgment. Based upon that representation, this court does not find it necessary to resubmit that question to the arbitrator for clarification or modification under § 11.

Conclusion

Coltec has failed to establish that the arbitrator either exceeded his authority or manifestly disregarded Pennsylvania law. The arbitration award therefore is confirmed in its entirety.

Coltec's motion to vacate the arbitration award is denied, Elliott's cross-motion to confirm is granted, and GE's motion to stay is denied as moot.

An appropriate order follows.

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

COLTEC INDUSTRIES, INC. : CIVIL ACTION

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v. :

:

ELLIOTT TURBOCHARGER : NO. 99-1400

GROUP, INC. and GENERAL :

ELECTRIC CO., INC. :

GENERAL ELECTRIC CO., INC. : MISCELLANEOUS ACTION

:

v. :

:

ELLIOTT TURBOCHARGER : NO. 99-mc-36

GROUP, INC. and COLTEC :

INDUSTRIES, INC. :

ORDER

AND NOW, this ___ day of September 1999, upon
consideration of the various motions in these related actions, it

hereby is ORDERED that the award of the arbitrator is CONFIRMED in full. Further, it hereby is ORDERED as follows:

1. Coltec's Motion to Vacate the Arbitration Award in No. 99-cv-1400 is DENIED;

2. Elliott's Cross-Motion to Confirm the Arbitration Award in No. 99-cv-1400 is GRANTED;

3. GE's Motion to Confirm and Stay the Arbitration Award in No. 99-mc-36 is DENIED AS MOOT; and

5. All other pending motions are DENIED AS MOOT.

BY THE COURT:

JAMES T. GILES C.J.

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