

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: 58 115 00134 12

THE ST. LOUIS RAMS, LLC

-and-

THE REGIONAL CONVENTION AND VISITORS COMMISSION

INTERIM AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties, see Exhibits M1-01, Amended and Restated St. Louis NFL Lease (“hereinafter, Lease”) at Par. 25, and M1-02, Annex 1... To Amended Lease at Par. 1.4, (both dated January 17, 1995), and as amended by M1-09, Second Amendment to Annex 1 at Pars. 1.4.1, 1.4.2, and 1.4.3 (dated September 20, 2007), and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby, **AWARD**, as follows:

This is an arbitration claim filed under AAA’s commercial rules. Hearing was held in St. Louis, Missouri, commencing on January 14, 2013, and continuing through January 24, 2013. The St. Louis Rams, LLC (hereinafter, “The RAMS” or “RAMS”), appeared by their corporate representative, John J. Shaw, and by counsel, James A. Klenk, Natalie J. Spears, Eric J. Andalman and Charles R. Vantine. The Regional Convention and Visitors Commission (hereinafter, “CVC”), appeared by its corporate representative, Kathleen M. Ratcliffe, and by counsel, Thomas M. Dee and JoAnn T. Sandifer. The proceedings were not reported stenographically or otherwise. Written exhibits were received in evidence. The testimony of witnesses was offered and received, to-wit: Kathleen M. Ratcliffe, Ronald Joseph Labinski, Megan Ridgeway, Carrie A. Falkenrath, Todd Waelterman, Deanna Venker, Kevin Demhoff, Tim Romani, Mark Williams, Douglas S. Shatto and Jack Wrightson. Upon completion of evidence, it was noted by

the Panel that comprehensive pre-hearing briefs had been submitted by able counsel and that further briefing was unnecessary. Instead, counsel argued the case orally.

Now, on this 1st day of February, 2013, having considered the entirety of the evidence and the arguments of counsel, and having studied the legal authorities submitted by counsel, whose good efforts have greatly assisted us in this case, and having endeavored in good faith to follow applicable law as cited by counsel, **we therefore find, conclude and order, as follows:**

Jurisdiction of the Panel

The jurisdiction of the Panel is to decide the issues agreed by the parties to be submitted to it for decision. Accordingly, the Panel has observed the arbitration agreements entered into by The RAMS and CVC. The matter submitted to it is whether the facilities leased to The RAMS, i.e., the Edward Jones Dome (hereinafter, “Dome”) in St. Louis Missouri, will be of “First Tier” quality – that is, among the top 8 of all NFL stadia – on the measuring date of March 1, 2015, if improved by the plans submitted by The RAMS or the plans submitted by CVC or some combination thereof fashioned by the Panel.

Paragraph 1.4.2 of Second Amendment To Annex 1 describes the Scope of First Tier Arbitration in part as, “... The ultimate issue to be presented to and decided by the arbitrators is: Whether the Facilities, taken as a whole, and each Component of the Facilities, respectively taken as a whole, measured against the applicable NFL Stadia (as such NFL Stadia are determined by the arbitrators in the event of failure of the parties to agree on the applicable NFL Stadia), as result of (i) the implementation of the CVC 2012 Plans, (ii) the implementation of the Rams 2012 Plans or (iii) the implementation of some combination consisting of parts of each of the CVC 2012 Plans and the Rams 2012 Plans would be improved to First Tier status in accordance with the First Tier standards of Section 1.3.1 as of the 2015 First Tier Measuring Date (the “Arbitrators’ Decision”). ...”

Section 1.3.1 of Annex 1 defines the First Tier Standard as,

“The Facilities, taken as a whole, and each Component of the Facilities, respectively taken as a whole, are to be “First Tier” on March 1, 2005 and March 1, 2015. To be “First Tier” at those dates, the Facilities, taken as a whole, and each Component of the Facilities, respectively taken as a whole, must be among the “top” twenty-five percent (25%) of all NFL football stadia and NFL football facilities, if such NFL football stadia and facilities were to be rated or ranked according to the matter sought to be measured. It is acknowledged and agreed by the parties hereto that to meet this First Tier standard at such times may require upgrades, alterations, additions and improvements, including without limitation additional construction to the Facilities, any or all of the Components and any or all part(s) thereof. ...”

Paragraph 1.1.1 of Annex 1 references Component as,

“... each and every one of the following facilities, equipment and/or services at the Facilities, including facilities appurtenant and related thereto, with respect to both quality and quantity:” ...

The Panel specifies several Components that it addresses below in its Interim Award:

- (a) the Box Suites, Suite Concourses and related amenities (exclusive of the quantity of such Box Suites beyond the currently scheduled amount plus the area around the northern end zone);
- (b) the Club Seats, Club Lounge, Club Concourses and related amenities (exclusive of the quantity of such club seating beyond the currently scheduled amount plus the convertible club seats); ...
- (m) the physical structure of the Facilities; ...

The Plans of the Parties

The Panel understands the “RAMS 2012 Plans” means their May 2012 plans. The Panel understands the “CVC 2012 Plans” means its August 2012 plans as supplemented by its November 2012 plans, consistent with the October 3, 2012 Order.

In its prehearing brief and in oral argument the CVC stressed that Annex 1 to the Lease speaks of “additional construction to the Facilities.” (emphasis added). The term “Facilities” is defined in the Recitals of the Lease as “the real property described in Exhibit A to this Amended Lease (the ‘Facilities’)” The pertinent language in Par. 1.3.1 of Annex 1 is included above. The Panel finds that the pertinent language is neutral with regard to whether the upgrades, alterations, etc. “to the Facilities” remain within the existing property line or extend beyond it. The word “to” identifies the thing affected (i.e., the Facilities) by the upgrades, alterations, etc., but it does not indicate one way or the other whether they will be within the property line or not. The Panel finds that neither Annex 1 nor any other of the Lease documents requires that the upgrades, alterations, etc. be within the existing property line. Whether an addition, for example, extends beyond the property line may be a valid consideration for the Panel in choosing between two competing plans, but the applicable lease language does not require that any additions, alterations, etc. be confined to the existing property lines in order to meet the First Tier standard.

The CVC further argues in its brief that the quoted language in Par. 1.3.1 of the Annex “does not contemplate the demolition and replacement of the existing Facilities.” In support of that argument the CVC points out that “the Lease only mentions replacement of the Facilities or the construction of substitute Facilities ‘when such work is required by the Amended Lease or this Annex 1 *as a result of a casualty*. . . . (emphasis added).” The language relied on by CVC appears in Par. 2.1 of Annex 1, which sets forth a list of things involving “the design, construction and development of the Facilities” of which The Regional Convention and Sports Complex Authority and CVC were required to keep the Rams informed when material decisions were made regarding them.

Among the items included in the list were “(c) the design, construction and/or development of all additions, alterations, modifications or improvements of the Facilities after the RAMS Facilities Delivery Date (including any restoration or replacement of the Facilities or the construction of substitute Facilities if such work is required by the Amended Lease or this Annex 1 as a result of a casualty), (collectively, ‘Additional

Construction’). The Panel finds that the reference to restoration or replacement of the Facilities in connection with a casualty cannot reasonably be interpreted as manifesting the intent of the parties that only in the case of a casualty would it be appropriate to replace a portion of the Facilities but not, for example, in the case of construction in order to meet the First Tier standard.

First, it should be noted that Par. 2.1 of the Annex is not concerned with a definition of the terms “construction,” “alterations,” “improvements,” etc. Its purpose is to make sure that the Rams are notified of all material decisions affecting design, construction and development of the Facilities. To avoid any doubt on that score, the parties included a specific reference to restoration or replacement of the Facilities in the event of a casualty. That does not mean, however, that the language “upgrades, alterations, additions and improvements, including without limitation additional construction to the Facilities, any or all of the Components and any or all part(s) thereof” in Par. 1.3.1 of Annex 1 should not be given its natural meaning.

In addition, the CVC 2012 Plans themselves provide for construction of cantilevered additions on both the east and the west sides of the Dome. It is difficult to envision how this could be done without demolishing and replacing some existing walls. The fact that a party’s proposed plans call for demolition and replacement work would not, by itself, be a proper basis for finding such plans to be incompatible with the provisions of Par. 1.3.1 of Annex 1.

Accordingly, the Panel interprets the arbitration agreements and the Lease to mean that, in order to meet the First Tier standard, either or both parties are free to propose, as indeed they have, that the facilities leased to the RAMS, including the Dome, should be improved, modified, enhanced, enlarged or substantially rebuilt within or without the original “footprint” or leasehold of the Dome.

The First Tier Plans

The Panel finds and concludes that The RAMS 2012 Plans will produce a First Tier stadium and that the CVC 2012 Plans will not. That is the Award of this Panel. There is no reason for the Panel to produce its own plan.

Discussion

The Panel notes initially that the First Tier standard is exceptionally high. It requires that both the Facilities as a whole, and each Component as a whole, must be among the top 25% of all NFL football stadia. As such, the Panel focuses its Interim Award on those items that do not meet this threshold. In order to provide particular guidance to the parties, the Panel notes the following specific deficiencies in the Dome, which are not cured by the CVC 2012 Plans despite the good faith and obvious best efforts of CVC's employees and representatives:

First, the Facilities as a whole are lacking, principally because of the small footprint on which the Dome is built. It is the smallest in the NFL. Both Parties exceed the footprint in their plans, the RAMS do so significantly while the CVC does so only in a limited fashion into the airspace beyond the footprint. This physical limitation manifests into several deficiencies when measured against the First Tier. In this analysis, the Panel found Exhibit 15 instructive.

The space within the stadium suites is visually cramped by the overhang of the level above. The overhanging upper level cuts off the upper part of the view, looking from the suite across the playing field. This means that a new, center-hung scoreboard in the Dome, as CVC envisions, could not be seen from the suites, which contain the most expensive seats in the house. CVC's plan to hang a new television monitor inside each suite to replicate the content of the scoreboard is an adequate substitute only if a small television screen can be said to offer the same experience as a big television screen, which is not true in the retail world or in the family room at home or anywhere else. Looking down to see the game, when one cannot look up to see the scoreboard, is no substitute for being able to look freely up and down and all around the environs of a loud,

active, energized, exciting NFL stadium during the game action. Simply seeing the game on the playing field is not the full NFL experience. In the Panel's judgment, the curtailment of the suite-holder's view by the overhang is so serious a shortcoming as to require a finding that the CVC 2012 Plans do not meet First Tier requirements with regard to Component (a). Spacious suite concourses and well-appointed suites cannot make up for an inferior viewing experience.

In addition, because the suites are the highest-priced seats in the stadium and provide a significant portion of annual revenue from home games, the Panel finds that the interference with the suite-holder's viewing experience caused by the overhang from the level above is a serious deficiency in the physical structure of Edward Jones Dome, Component (m), the physical structure of the Facilities. This deficiency plus a lack of openness, light and air in the stadium, as discussed below, cause the Panel to conclude that the CVC 2012 Plans do not meet First Tier requirements with regard to Component (m).

Second, the tread depths for club seats, as well as their location are not First Tier at the Dome. The CVC 2012 Plans do not address this deficiency. Spacious legroom is required for premium seats. In addition, the state of the art is to provide a significant number of club seats along the sidelines, closer to the field. This cannot be accomplished satisfactorily in the Dome as the general admission seats, which would have to be converted into club seats, have a tread of 33 inches, which is inadequate for a First Tier status. This tread depth deficiency is a disqualifying factor by itself regarding the Facilities taken as a whole and Components (b) and (m).

Third, the Dome – as it exists today and as CVC believes that it should exist in the future – lacks openness, light and air. The Panel is impressed with the evidence showing that, during the 20 years since the Dome was opened in 1995 to the measuring date, 17 of 22 stadia built or rebuilt or to be built, have been *open air*; four of the other five stadia have been closed with *operable roofs*; and the other one of five *admits light copiously* through *expansive windows* in the stadium.

This is convincing proof of the state of the art and the meaning of First Tier for the physical structure of stadia in the NFL world. In order to be First Tier, the Dome must be open or, if closed, must have an operable roof and abundant natural light inside the stadium. The Dome cannot be open as it needs to accommodate the dual purposes of hosting NFL football games and other functions. The Dome lacks, and the CVC 2012 Plans do not adequately address the issue of openness, air and expansive light inside the stadium. For example, at its visit to the Dome, the Panel noted the feeling of confinement it felt within the seating bowl as compared with its positive reaction to its surroundings in the other stadia toured. The Panel finds that this deficiency cannot be cured by the clerestory panels proposed in the 2012 CVC Plans. The amount of light to be admitted, for example, would be much less than at Ford Field or Lucas Stadium, and the lack of openness caused by the truncated sight line would not be remedied. The lack of openness and of abundant natural light at the Dome prevent it from being First-Tier in Facilities taken as a whole and in physical structure, Component (m).

The Panel concludes that a stadium built in accordance with the Rams 2012 Plans will be First Tier as a whole and as to each Component. It will allow games to be played in the open air when the weather permits and suffuse the field with natural light even when the roof is closed. It would have premium seats and amenities, with the most expensive seats in the best viewing locations of the building. Lounges would be appropriately situated to premium seating, and spacious concourses would facilitate movement, allow for adequate fixed points of sale, and minimize congestion in the structure. The Rams 2012 Plans, the Panel concludes, would meet the lease requirements for First Tier Facilities, taken as a whole, and for each Component. In fact, the CVC does not challenge most aspects of the Rams Plans. It argues that the stadium would not be First Tier because the sightline measurement for the fans in the uppermost seats would exceed the 623 foot distance endorsed by the CVC expert. However, the evidence shows that a number of new stadia, including some of the top stadia, exceed this 623 foot distance. The Panel concludes that this item is no longer determinative of First Tier if it ever was.

CVC also criticizes the RAMS' plan as exceeding the level of improvements necessary to accomplish a First Tier status. The Panel notes that the Lease documents establish a minimum threshold, that is, that the improvements are to bring the Dome within the First Tier. However, they do not prohibit the plans from attaining a prominent or even first position among the First Tier in some items. The Panel does not find itself in a situation where it must choose between First Tier Plans that exceed minimum First Tier requirements and Plans that meet the minimum requirements. Rather its choice is between Plans that meet the requirements and those that do not. In such circumstances, the Panel has only one choice.

CVC argues that the Dome is a shared facility and that “[a] plan that requires total destruction of the Unreserved Facilities for a period of three years, and prohibits any use by CVC of these areas during that time, blatantly conflicts with these provisions of the Lease and the underlying intent of the parties with respect to the shared nature of the Facilities.” Similarly the CVC argues that the Rams 2012 Plans may not be accepted because a three-year construction period would prevent the Rams from fulfilling their contractual obligation in the Lease to play all of their home games at the Dome.

The record reflects an enormous amount of time and attention devoted to negotiating the terms involving the First Tier standard. The language is clear, and the Panel must assume that the parties intended what they wrote. There is no inherent contradiction between the Lease provisions involving First Tier status and the provisions pertaining to the CVC's use of the premises and the Rams playing their home games at the Dome. There are provisions in the Lease, for example, recognizing that contingencies may occur that prevent a party from enjoying the use of the premises and the resulting necessity to make other arrangements in such circumstances. Nothing in the Lease documents, however, reflects an intention to excuse either party from abiding by the clear and laboriously negotiated terms of the Lease pertaining to the First Tier status of the Dome.

The Panel notes that its task is to choose between the plans offered by the parties, or to fashion its own plan, in order to achieve First Tier status at the Dome by the measuring

date of March 1, 2015. The Panel lacks jurisdiction to debate and adjudicate the politics of the choices offered, to involve itself in the dynamics of friendly versus unfriendly regulators, to attempt to influence the closing of Broadway Street on game days versus the vacation of Broadway Street (which is not part of the “facilities” leased to the RAMS but each of which is urged by one party or the other; it neither predetermines any decisions from those governmental agencies which would determine proposals therefor), or to opine whether any of the available choices make sense for a city contemplating massive investment in a stadium whose lease will be within several years of expiration when the new facilities, whatever they may be, are completed. The Panel leaves these and all other considerations, except its assigned task, to the wisdom of others.

Finally, the Panel has appreciated the professionalism, competence and efficiency of counsel, and the courtesy of the parties, to the Panel and to each other, throughout the hearing of this case.

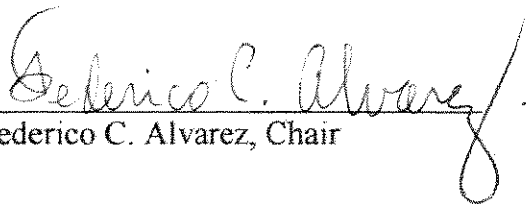
Attorney’s Fees and Miscellaneous

The RAMS are the prevailing party in this arbitration and, as such, are entitled to an award for their costs and reasonable attorney’s fees, differentiated from the costs of the arbitration. The Panel retains jurisdiction to entertain an appropriate application from the RAMS for their costs and reasonable attorney’s fees, to be filed to AAA no later than February 15, 2013, with a response to be filed by CVC no later than March 1, 2013. The Panel will consider this matter fully submitted upon receipt of the documents and will issue a prompt Final Award without further argument or hearing.

This Award is in full settlement of all claims submitted by the parties in this Arbitration. All claims not expressly granted herein are hereby, denied, including but not limited to, CVC’s claim for a contribution of 49% by The RAMS to the financing for the implementation of any plans, which claim the Panel addressed previously in its October 11, 2012 Order.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

BY THE PANEL:



Federico C. Alvarez, Chair

David J. Blair, Arbitrator

Sinclair Kossoff, Arbitrator

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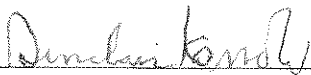
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