



1 **FOR APPELLANT:**

Gary S. Stein, Pashman Stein,  
P.C., Hackensack, N.J.; Leo G.  
Kailas (on the brief), Reitler  
Kailas & Rosenblatt, LLC, New  
York, N.Y.; Robert P. Stein (on  
the brief), Duferco S.A.,  
Lugano, Switzerland.

9 **FOR APPELLEES:**

David W. Brown, (Joshua D.  
Anders on the brief), Paul,  
Weiss, Rifkind, Wharton &  
Garrison LLP, New York, N.Y.  
(counsel for Tube City IMS,  
L.L.C.);

James M. Reilly (on the brief),  
Herzog Law Firm, P.C., Albany,  
N.Y. (counsel for R. Kelly  
Freedman Holding Group, LLC).

21 Appeal from a judgment of the United States District  
22 Court for the Southern District of New York (Rakoff, J.).

24 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**  
25 **AND DECREED** that the judgment of the district court be  
26 **AFFIRMED.**

29 Duferco S.A. ("Duferco") appeals an order confirming an  
30 arbitral award in favor of Tube City IMS, L.L.C. ("Tube  
31 City") and R. Kelly Freedman Holding Group, L.L.C. We  
32 assume the parties' familiarity with the underlying facts,  
33 the procedural history, and the issues presented for review.

35 "We review a district court's decision to confirm an  
36 arbitration award de novo to the extent it turns on legal  
37 questions, and we review any findings of fact for clear  
38 error." Duferco Int'l Steel Trading v. T. Klaveness  
39 Shipping A/S, 333 F.3d 383, 388 (2d Cir. 2003).

41 An award may be vacated if, inter alia, an arbitrator  
42 is "guilty of misconduct . . . in refusing to hear evidence  
43 pertinent and material to the controversy." 9 U.S.C. §  
44 10(a)(3). Duferco argues such a vacatur can be based on an  
45 arbitrator's error of law even if the arbitrator did not act  
46 in manifest disregard of the law. See Klaveness, 333 F.3d  
47 at 388-90 (discussing manifest disregard). Even supposing

1 this to be true, Duferco does not show the arbitrator erred,  
2 let alone committed an error in "bad faith or so gross as to  
3 amount to affirmative misconduct." United Paperworkers  
4 Int'l Union v. Misco, Inc., 484 U.S. 29, 40 (1987)  
5 (reviewing arbitrator's evidentiary determination).  
6

7 According to Duferco's contract to purchase scrap steel  
8 from Tube City, measurement of the impurity level of the  
9 scrap would be performed by an independent inspector and  
10 would be "final at loadport." Duferco argues that the  
11 arbitrator misinterpreted New York law in holding that  
12 evidence from subsequent inspections--which could indicate  
13 the independent inspector grossly erred--is insufficient to  
14 establish that the inspector acted in bad faith and  
15 therefore insufficient to overcome the "final at loadport"  
16 provision. But Duferco failed to present to the arbitrator  
17 any New York authority in which a court found such evidence  
18 sufficient, let alone precedent that bound the arbitrator to  
19 consider--at the first phase of the arbitration--the  
20 subsequent inspection as evidence that the first inspection  
21 was conducted in bad faith. Cf. Semptra Energy Trading Corp.  
22 v. BP Prods. N. Am., Inc., 52 A.D.3d 350, 350, 860 N.Y.S.2d  
23 71 (1st Dep't 2008) ("[P]ostdischarge report . . . was not  
24 material under the parties' agreement[] to allege the  
25 possibility of manifest error in the official binding  
26 pre-discharge report." ).  
27  
28

29 Finding no merit in Duferco's remaining arguments, we  
30 hereby **AFFIRM** the judgment of the district court.  
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33 FOR THE COURT:  
34 CATHERINE O'HAGAN WOLFE, CLERK  
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