

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21424
O/prt

_____AD3d_____

Argued - October 3, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2008-00424

DECISION & ORDER

In the Matter of Transport Workers Union,
Local 100, etc., respondent, v New York City
Transit Authority, appellant.

(Index No. 8752/07)

Martin B. Schnabel, Brooklyn, N.Y. (Robert K. Drinan and Valerie Ferrier of counsel), for appellant.

David McGruder, New York, N.Y., for respondent.

In a proceeding pursuant to CPLR article 75 to vacate an arbitration award dated December 8, 2006, the New York City Transit Authority appeals from an order of the Supreme Court, Kings County (Schack, J.), dated November 27, 2007, which granted the petition and directed the reinstatement of Edward Miller to the position of track specialist with back pay and lost benefits.

ORDERED that the order is reversed, on the law, with costs, the petition to vacate the arbitration award is denied, and the proceeding is dismissed.

Given the policy in this State of “supporting arbitration and discouraging judicial interference with either the process or its outcome” (*Matter of New York City Tr. Auth. v Transport Workers Union of Am., Local 100, AFL-CIO*, 99 NY2d 1, 6), judicial review of an arbitration award is narrowly circumscribed, and the award “may not be vacated unless it is violative of a strong public policy, is irrational, or clearly exceeds a specific limitation on an arbitrator’s power” (*Matter of New York City Tr. Auth. v Transport Workers’ Union of Am., Local 100, AFL-CIO*, 306 AD2d 486; see *Matter of Henneberry v ING Capital Advisors, LLC*, 10 NY3d 278, 284; *Maross Constr. v Central*

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N.Y. Regional Transp. Auth., 66 NY2d 341, 346; *Matter of Sprinzen [Nomberg]*, 46 NY2d 623, 629; *Binghamton Civ. Serv. Forum v City of Binghamton*, 44 NY2d 23, 28).

Contrary to the determination of the Supreme Court, the arbitrator did not exceed her power or render a completely irrational award in this case. Rather, the award was consistent with the evidence presented, the applicable federal regulations governing drug testing for transit employees (*see* 49 CFR 40.151; 49 CFR 40.191; 49 CFR 40.193), and the parties' collective bargaining agreement. Accordingly, the Supreme Court erred in re-weighting the evidence, making new credibility determinations, and substituting its judgment for that of the arbitrator (*see Matter of New York City Tr. Auth. v Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332).

MASTRO, J.P., SKELOS, BALKIN and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court