

Matter of Sales v New York City Tr. Auth.

2009 NY Slip Op 30520(U)

February 10, 2009

Supreme Court, New York County

Docket Number: 402871/08

Judge: James A. Yates

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. JAMES A. YATES PART 50Y
Justice

In the Matter of the Application of
LAVIEN SALES,

Petitioner,

- v -

NEW YORK CITY TRANSIT AUTHORITY,
MaBSTOA, AND EARL R. PFEFFER,
Respondent.

[Handwritten notes and stamps]

INDEX NO. 402871-08
MOTION DATE
MOTION SEQ. NO. 001 & 002

001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits...	_____
Answering Affidavits - Exhibits _____	_____
Replying Affidavits _____	_____
Cross-Motion: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

DISC

Motion Seq. 001 and 002 are consolidated for purposes of this decision.
Petitioner filed an application, pursuant to CPLR section 7511[b], for an order vacating a Sept. 18, 2008 arbitration award issued by Earl Pfeffer, the arbitrator, which upheld disciplinary sanctions against him. Respondents cross-moved to dismiss the petition. For the reasons set forth in the attached Decision and Order,

the petition is dismissed and the award is confirmed.

Settle Order.

Dated 2-10-09

HON. JAMES A. YATES

ENTER: _____

J.S.C.
CLERK
SUP. CT. NY. COUNTY

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50Y

-----X
In the Matter of the Application of :

LAVIEN SALES, :

Petitioner, Decision and Order
Index No. 402871/08

For an Order Vacating an Arbitration
Award Pursuant to CPLR 7511

-against- :

NEW YORK CITY TRANSIT AUTHORITY, :
MaBSTOA, and EARL R. PFEFFER, :
Respondents. :

-----X

Hon. James A. Yates, J.S.C.

For purposes of this decision, Motion Seq. No. 001 and Motion
Seq. No. 002 are consolidated.

After an arbitrator upheld disciplinary charges against
the Petitioner Laven Sales, he filed this Article 75
proceeding to vacate the arbitration award issued on September
15, 2008. Respondents New York City Transit Authority, the
Manhattan and Bronx Surface Transit Operating Authority
(MaBSTOA), and Earl R. Pfeffer, the arbitrator, cross-move to
dismiss the petition and confirm the arbitration award.

Petitioner is a bus driver employed by the New York City
Transit Authority (Transit Authority)/MaBSTOA since April 9,
2001. He is also a member of Transport Workers' Union Local 100
(TWU). The Transit Authority, MaBSTOA and the TWU entered into
a collective bargaining agreement and subsequent Memorandums of
Understanding which provide for a disciplinary grievance
process for TWU-represented employees.¹ The grievance process

¹ The disciplinary grievance procedures are outlined in Article 2.1
of the Collective Bargaining Agreement and attachment B to the MOU. See Resp.
Verified Answer, exhibit A, pages 33 - 48.

is a series of steps which culminate in arbitration. An arbitration hearing is the final step in grievance process set forth in the collective bargaining agreement by which the union or an employee represented by that union can contest disciplinary actions by the Transit Authority against TWU - represented employees.

On July 24, 2007, disciplinary charges were brought against Petitioner for being absent without leave (AWOL) for not reporting for his tour of duty at 5:00 a.m. and for not calling in at least one hour in advance to indicate he would not be coming in to work on that day. Mr. Sales called in at 6:00 a.m. and admits to oversleeping on that day. The penalty sought was originally a 20-day suspension, however, at arbitration, his penalty was reduced to one day.

As well, on July 25th, additional disciplinary charges were brought against the Petitioner for failing to speak with General Superintendent Novello before he went on his bus run. He failed to comply with these instructions. Instead, Petitioner left the bus depot and went home. He did not inform anyone that he left the depot or told anyone where he was going. He was not paid for that day.

Under the collective bargaining agreement, Mr. Sales is entitled to a series of grievance hearings, ending in arbitration. The Impartial Arbitration Hearing serves as the final step in the grievance process. All decisions by that arbitrator are final and binding.² The union filed a grievance on his behalf and demanded arbitration. An arbitrator and any attorney of record in the arbitration have subpoena power. The arbitration hearing was held on July 29, 2008, and the award was issued on September 15, 2008.

Mr. Pfeffer, the arbitrator, held in favor of the employer based on the language of the collective bargaining agreement, Petitioner's conduct, and the testimony presented at the hearing. He ruled that the Transit Authority had "just cause to discipline Sales, " but that the proposed sanction for the July 25th incident was too harsh a sanction. Accordingly, the arbitrator reduced the five-day suspension sought to a three-day suspension for the July 25th failure to comply with his employer's procedures. Next, the arbitrator found the one-day suspension for the July 24th AWOL incident was not excessive.

² See Resp. Verified Answer, affidavit of Siegel and exhibit A, pages 27-31, and 34 of the Collective Bargaining Agreement.

* 5]

On December 29, 2008, Petitioner filed his Article 75 petition to annul and vacate the arbitration award, arguing that the arbitrator had exceeded his powers and that his decision was made premised on a mistake of law and facts. He asserts that a fraudulent document; to wit, Novello's timesheet, was accepted by the arbitrator. He also submitted a request to subpoena certain information from the Transit Authority and MaBSTOA, including his run for July 25, 2007, the sign-in sheet for General Superintendent Novello, and the tour of duty for a co-worker who testified against him. He also filed a discrimination complaint with the New York State Human Rights Division on July 9, 2007 and alleges that he is the target of retaliation because of his complaint .

A deferential standard of review applies to an arbitrator's interpretation of a contract. Since arbitration awards are accorded great deference, "it is imperative that the integrity of the process, as opposed to the correctness of the decision, be zealously safe-guarded (*Goldfinger v Lasker*, 68 NY2d 225, 230 [1986])." The burden of proof for vacating the award is upon Petitioner.

Under CPLR 7511, in cases involving a collective bargaining agreement, an arbitrator's decision may be vacated only at the insistence of one or two parties, that is, the employer and the union, not by the employee (*see Matter of Diaz v Pilgrim State Psychiatric Ctr*, 62 NY2d 693 [1984]). In these cases, an individual employee is not a "party" under that statute. Unless there are specific provisions in the collective bargaining agreement granting an employee particular and specific rights in relation to vacating an arbitrator's award, the individual employee lacks standing to seek vacatur of the award.³ Applying that standard, because Petitioner was not a party to the collective bargaining agreement, it is clear that Petitioner does not have standing to bring this proceeding.

Moreover, even assuming that Petitioner had standing, he has not adequately demonstrated that the arbitrator's decision should be vacated by the Court. The setting aside of an arbitration award is governed by section 7511 which enumerates the grounds under which a court may grant that relief. The statute provides that:

"The award shall be vacated on the application of a party

³ See *Resp. Verified Answer*, exhibit D, Article 11 of the Collective Bargaining Agreement.

who participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of the party were prejudiced by: (I) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection (subd. (B) par 1).

Errors of fact and law are part of the arbitration risk, and an award will not be vacated unless it is violative of a strong public policy, or is completely irrational (see *Silverman v Benmor Coats*, 61 NY2d 299 [1984], *rearg denied sub nom. Norris v Cooper*, 62 NY2d 803 [1984]). In fact, an arbitrator's interpretation may even disregard "the apparent, or even the plain meaning of the words" of the contract before him, and the award will still be impervious to challenge in the courts (*Rochester City School Dist. v Rochester Teachers Assn.*, 41 NY2d 578 [1977]; *Matter of Schaeffer v Goldstein*, 63 NY2d 653 [1984]).

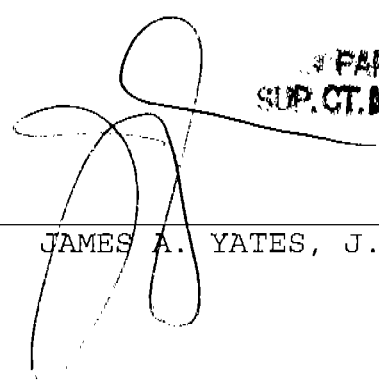
In this case, Mr. Sales has presented no basis for issuing a subpoena or more importantly, for setting aside the arbitration award. Petitioner was represented by counsel and was given an opportunity to contest the charges against him. As well, he has not demonstrated partiality, misconduct or corruption by the arbitrator. Nor has he demonstrated that the arbitrator exceeded or imperfectly executed his decision. Finding that the award does not implicate strong public policy concerns or that the arbitrator failed to give a reasonable interpretation of the collective bargaining agreement, there are no viable grounds for vacatur of the arbitration award. Accordingly, the Court is bound to confirm it and dismiss the petition.

This constitutes the Decision and Order of the Court.

Settle Order on Notice.

Dated: February 10, 2009
New York, New York

PART 50Y
SUP. CT. N.Y. COUNTY



JAMES A. YATES, J.S.C.