

<b>Matter of Crane v New York City Tr. Auth.</b>
2013 NY Slip Op 32157(U)
June 9, 2013
Supreme Court, New York County
Docket Number: 156265/2013
Judge: Cynthia Kern
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN  
J.S.C. Justice

PART \_\_\_\_\_

Index Number : 156265/2013  
CRANE, MARK  
vs  
NEW YORK CITY TRANSIT  
Sequence Number : 001  
VACATE OR MODIFY AWARD

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

*is decided in accordance with the annexed decision.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 6/9/13

CK, J.S.C.

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

CYNTHIA S. KERN

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

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

MARK CRANE,

Petitioner,

Index No. 156265/2013

-against-

**DECISION/ORDER**

NEW YORK CITY TRANSIT AUTHORITY,

Respondent.

-----X  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmation in Opposition .....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Mark Crane, *pro se*, commenced the instant proceeding seeking an Order pursuant to CPLR § 7511(a) vacating the May 23, 2013 arbitration award by arbitrator William F. Hempfling and the February 12, 2012 arbitration award by arbitrator Stephen F. O’Beirne. Additionally, petitioner seeks an order directing respondent to reinstate his job as train operator and directing a rehearing of the still active arbitration of grievance #CI-2006-0593. For the reasons set forth below, the petition is denied in its entirety.

The relevant facts are as follows. Beginning in 2001, petitioner was employed by respondent the New York City Transit Authority (NYCTA) as a Train Operator. During the course of his employment, petitioner and respondent were involved in several arbitrations over

disciplinary action notifications (“DAN”) given by respondent to petitioner. Specifically, the instant petition involves two arbitration awards that were rendered on February 12, 2012 (the “February Award”) and May 23, 2013 (the “May Award”), which involved DANs that called for petitioner’s discharge from employment.

In the February Award, the arbitrator found that respondent did not have cause to discharge petitioner for the allegations of misconduct contained in DAN # 09-2337-00, which was issued when petitioner overran a signal north of 125<sup>th</sup> St. While the arbitrator found that discharge was excessive under the circumstances, it held that respondent did have cause to impose a thirty day suspension and a final warning for any disciplinary infraction in the conduct/performance track.

In the May Award, the arbitrator considered the disciplinary actions taken by respondent against petitioner stemming from DAN # 1-2333-0034 and DAN # 12-2333-0045. DAN # 10-2333-0034 involved an incident that occurred on or about August 25, 2010 at the Westchester Train Yard Tower, wherein petitioner was supposed to attend a training class entitled “Heightened Security” but showed up late, which allegedly led to an altercation between petitioner and fellow NYCTA employees. DAN # 12-2333-0045 was issued after petitioner failed to make a scheduled stop at the 225<sup>th</sup> Street Station on May 19, 2012. Ultimately, the arbitrator found that respondent did not have cause to discipline petitioner for the incident that occurred at the Westchester Train Yard Tower. However, the arbitrator found that discharge was the appropriate penalty for petitioner’s failure to make the scheduled stop on May 19, 2012. Accordingly, petitioner’s employment was terminated.

Petitioner now brings the instant application to vacate the February and May Award and

an order directing respondent to reinstate him as a train conductor. Petitioner, who is appearing *pro se*, raises a host of objections as to how the underlying arbitrations were conducted as grounds for vacating the February and May Award. Respondent argues in opposition that, as an initial matter, the portion of petitioner's application seeking vacatur of the February Award is time barred. Additionally, respondent argues that, in any event, petitioner has failed to state a proper ground for vacating either the February or May Award pursuant to CPLR 7511.

Pursuant to Article 75 of the CPLR, a party aggrieved by an arbitration award may move to vacate the award. Specifically, CPLR § 7511(a) states that “[a]n application to vacate or modify an award may be made by a party within ninety days after is [sic] delivery to him.” However, it is well settled that the determinations of an arbitration panel are not to be lightly set aside and “judicial review of an arbitration proceeding is extremely limited.” *Frankel v. Sardis*, 76 A.D.3d 136, 139 (1<sup>st</sup> Dept 2010). Indeed, “[c]ourts may vacate an arbitrator's award only on the grounds stated in CPLR 7511(b),” which provides

1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that 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.

Thus, “[e]ven in circumstances where an arbitrator makes errors of law or fact, courts will not

