

Matter of New York City Tr. Auth. v Amalgamated Tr. Union, Local 1056
2020 NY Slip Op 31042(U)
April 20, 2020
Supreme Court, New York County
Docket Number: 451226/19
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21

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In the Matter of the
NEW YORK CITY TRANSIT AUTHORITY,

Petitioner,

-against-

AMALGAMATED TRANSIT UNION, LOCAL 1056,

Respondent,

Index No: 451226/19

Mot. Seq. 1

Decision

For an Order Pursuant to Article 75 of the
CPLR Permanently Staying Arbitration.

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LISA SOKOLOFF, J. :

Petitioner New York City Transit Authority moves for an order permanently staying the arbitration proceeding brought by respondent Amalgamated Transit Union, Local 1056.

Petitioner is a public benefit corporation authorized by the New York State Authorities Law to provide public transportation in the City of New York. Respondent is a union and a duly recognized collective bargaining representative for various employees of petitioner, including non-party Joseph Williams, a bus driver who is the subject of this proceeding.

The parties negotiated a collective bargaining agreement (CBA) which includes provisions to supplement an injured employee’s wages when unable to work due to an on-the-job injury. The CBA includes a provision for differential pay, the difference between the amount of compensation awarded by the Workers’ Compensation Board (Board) and the employee’s usual wages for a 40-hour work week. A Memorandum of Understanding (MOU), which is a supplement to the CBA, provides additional pay to bus operators who have been assaulted on the job, known as “assault pay.” The Board approves and orders payments to injured employees of

petitioner. This is based on the rule that petitioner is required to maintain Workers' Compensation insurance in the event an employee suffers an on-the-job injury. The insurance guarantees payment by petitioner's insurance carrier of partial wage replacement and the payment of medical bills of injured employees. Petitioner is required to file reports of employee injuries with the Board.

On July 22, 2015, respondent filed a contract interpretation grievance seeking assault pay for Williams pursuant to section 2.1(B) of the CBA. The provision consists of a three-step procedure for the resolution of the grievance, the final step being an arbitration if respondent remains dissatisfied with the outcome of the preceding determinations. The grievance involves an incident occurring on October 22, 2014, in which Williams had a physical altercation with a passenger, and a subsequent incident occurring on December 3, 2014, where Williams experienced a verbal altercation with another passenger. Respondent apparently sought to have the later incident classified as a recurrence of the previous one, for the purpose of determining whether Williams was entitled to additional assault pay. On April 27, 2017, the step I decision concluded that as a preliminary matter, the grievance was procedurally defective and should have gone to a different grievance forum. More important, the decision regarded the December 3, 2014 incident as a separate injury and not a recurrence of the October 22, 2014 incident. After respondent appealed to step II, the lower decision was upheld on June 5, 2017. The step II decision also stated that the proper forum for a further determination of the grievance was expedited arbitration.

During the duration of the grievance procedure, petitioner filed Williams' injury incidents with the Board, as required. Petitioner filed a "First Report of Injury" with the Board on October 24, 2014 (Case # G1172030). Since Williams did not take any time off after the October 22, 2014 incident, there was no lost time. After the December 3, 2014 incident, Williams left work

and did not return to work until October 20, 2015. Petitioner filed another Report of Injury for the second incident on February 23, 2015 (Case # G1247319). The Board's Administrative Judge (Judge) determined both cases separately, the first one on August 14, 2015, the second one on January 27, 2016. Regarding the October 22, 2014 incident, the Judge decided that Williams had a work related injury involving PTSD and depression. Regarding the December 3, 2014 incident, the Judge also affirmed that Williams suffered from PTSD. There was a discussion of payments to him in the decisions, but no mention of assault pay.

Respondent attempts to complete the grievance proceeding by seeking expedited arbitration as prescribed in the CBA. Petitioner brings this court proceeding to permanently stay arbitration. Petitioner's basic argument is that the decisions of the Board are meant to be the final determination of the subject grievance, and that such arbitration is contrary to Workers' Compensation Law (WCL), specifically sections 20 and 23.

In opposition, respondent argues that the grievance procedure is separate from the Board procedure and the Board determinations have no effect on its right to arbitrate. Respondent contends that the issue of a possible recurrence between the two incidents was never raised before the Board and the Judge never reached any decision on the matter, a major part of this grievance. Respondent argues that there is no evidence that the Board would prohibit the arbitration as defined in the CBA.

The threshold determination of whether a dispute is arbitrable is well settled. It is a two-part test. First, it must be determined if "there is any statutory, constitutional or public policy prohibition against arbitration of the grievance" (*Matter of City of Johnstown v. Johnstown Police Benevolent Assn.*, 99 NY2d 273, 278 [2002]). If no prohibition exists, the second part is whether the parties in fact agreed to arbitrate the particular dispute by examining their collective bargaining agreement. If there is a prohibition, then the arbitrator cannot act (*see Matter of*

United Fedn. Of Teachers, Local 2, AFT, AFL-CIO v Board of Educ. of City School Dist. of City of N. Y., 1 NY3d 72, 80 [2003].

The CBA addresses the terms and conditions of employment such as wages, rights and arbitration procedures for contractual and disciplinary disputes. Section 2.7 of the CBA addresses pay related to on-the-job injuries. The differential pay is expressly defined as the difference between a Board award and the injured employee's wages for a standard 40-hour work week. In the supplemental MOU, section 8 specifically addresses bus operators' right to assault pay as a result of on-the-job assaults. This pay consists of a differential payment which shall be sufficient to comprise, together with Workers' Compensation payable to the operator.

Section 2.1 of the CBA provides and defines the grievance and arbitration procedures. Respondent brought a grievance against petitioner regarding bus operator Williams' alleged right to differential pay under section 8 of the MOU. After timely complying with the terms of this section, respondent is now at the arbitration stage, having completed the step II level.

Petitioner contends that the Board would not allow arbitration of this dispute, due to the determinations made by its Judge. Section 20 of WCL provides, in part, that the Board shall have full power and authority to determine all questions in relation to the payment of claims presented to it for compensation under the provisions of this chapter. Furthermore, the Board's decision is final as to all questions of fact. Section 23 provides that the Board's decision is final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless reversed or modified on appeal. The Board's decisions on the two incidents were not appealed and are apparently final. The question is whether the Board decisions prohibit arbitration.

After examining the evidence, the court finds that respondent is entitled to arbitrate the grievance. The grievance is covered by the CBA and the MOU. These agreements concern the

parties and not the Board, which is not a party to the agreements. The agreements concern additional pay that comes out of petitioner's budget. As respondent asserted, the Board never discussed the issue of recurrence in its determinations, as the issue was never raised. Thus, the Board did not consider whether Williams was entitled to assault pay. Moreover, there is no specific statutory, constitutional or public policy ground that would preclude arbitration.

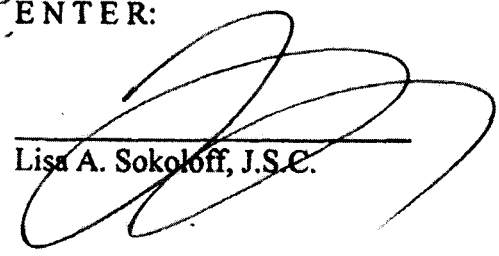
The issue of a possible recurrence between the two incidents is a major matter during the grievance procedure. Upon reaching the step II stage of the procedure, respondent is now entitled to seek arbitration pursuant to the CBA. The agreements between the parties advocate the use of arbitration in these situations.

Accordingly, it is

ORDERED that petitioner New York City Transit Authority's motion to permanently stay arbitration is denied.

Dated: April 20, 2020
New York, New York

ENTER:



Lisa A. Sokoloff, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE