

**Matter of New York City Tr. Auth. v United Tr.
Leadership Org.**

2021 NY Slip Op 30544(U)

February 26, 2021

Supreme Court, New York County

Docket Number: 452015/2020

Judge: Eileen A. Rakower

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: Hon. EILEEN A. RAKOWER
Justice

PART 6

In the Matter of the Application of the NEW YORK CITY TRANSIT AUTHORITY,

**INDEX NO. 452015/2020
MOTION DATE
MOTION SEQ. NO. 1
MOTION CAL. NO.**

Petitioner,

- against-

UNITED TRANSIT LEADERSHIP ORGANIZATION,

Respondent.

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

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...
Answer – Affidavits – Exhibits _____
Replying Affidavits

PAPERS NUMBERED

█
█
█

Cross-Motion: x Yes No

Petitioner New York City Transit Authority (“Petitioner”) brings this action, pursuant to Article 75 of the New York Civil Practice Laws and Rules (“Article 75”), seeking to vacate the penalty imposed in an arbitration award dated August 26, 2020 (DAN 20-2324-0006) (the “Award”). Respondent United Transit Leadership Organization (“Respondent”) cross-moves to confirm the Award.

Background/Factual Allegations

Petitioner “is and at all pertinent times hereinafter has been a public benefit corporation organized ... to provide, *inter alia*, public transportation in the City of New York, which includes bus and subway service.” Respondent “is an unincorporated association and is the duly recognized collective bargaining representative for various employees of [Petitioner].”

Mr. Brown has been employed by Petitioner for fourteen years and was a manager with the title of Desk Superintendent (“Superintendent”) until August 26, 2020.

On June 2, 2020, about a week after the May 25, 2020 killing of George Floyd an African American by a Minneapolis police officer, Mr. Brown posted on his private Facebook page a screen shot from a Twitter post which stated the following:

“Remember, white people: Your sole purpose during this time is to protect people of color while they’re destroying the city. Obey. Submit.” Mr. Brown’s colleagues learned about the post and eighteen employees of Petitioner who worked with or were supervised by Brown. After Petitioner received the complaint, other posts by Mr. Brown were discovered.

Thereafter, Petitioner served Mr. Brown with disciplinary charges which alleged that he violated Petitioner’s Respectful Workplace Policy (DAN No. 20-2324-0006). On July 20, 2020, disciplinary charges were heard pursuant to a collectively bargained dispute resolution procedure, culminating in tripartite arbitration with an impartial Chair, Howard Edelman, of the arbitration panel, between Mr. Brown’s labor union, Respondent, and Petitioner. The arbitration determined that Petitioner does not have “just cause to discharge” Mr. Brown and Mr. Brown would be demoted to an hourly position determined by Petitioner for six months, a “time served” suspension without pay.

Parties’ Contentions

Petitioner argues that the Award violates New York’s strong public policy. Petitioner asserts that Mr. Brown’s comments would have a negative impact on Petitioner’s operations and mission and have created a “racially hostile and toxic environment for his Black co-workers and subordinates.” Petitioner asserts that the arbitrator was not required to terminate Mr. Brown’s employment with Petitioner, but permitting him to return to a managerial position is plainly contrary to clear statutory mandates and violates public policy. Additionally, Petitioner asserts that one of the essential responsibilities of a Superintendent “is to be a model of conduct for other employees and enforce the Respectful Workplace Policy and all anti-discrimination and anti-harassment policies.” Petitioner argues that “it impossible for [Petitioner] and [Mr. Brown’s] co-workers to rely on him to enforce, as a manager, the very policies he violated.”

In opposition, Respondent argues that there is no public policy requiring a specific penalty for employees who commit discriminatory acts and, even if there were, Mr. Brown did not commit a discriminatory act. Respondent asserts that Mr. Brown’s:

conduct in no way interfered with the Authority’s obligation to provide a non-discriminatory workplace, he harassed no-one, threatened no-one, discriminated against no-one. He made offensive, tone deaf, fuel-on-the-fire

comments that disregarded the need to work with others in a multi-cultural environment and was severely punished for it.

Respondent further asserts that Mr. Brown “had a constitutional right to comment on matter of public concern that needed to be balanced against the racially insensitive nature of the comments.” Respondent argues that the arbitrator imposed a proper disciplinary penalty. Additionally, Respondent argues that Award should be confirmed since there is no basis to disturb it.

Legal Standard

CPLR § 7510 states that “[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511.”

CPLR § 7511(b) provides four grounds on which an application to confirm an arbitration award may be denied: fraud; partiality by the arbitrator; the arbitrator exceeding his or her authority; and a failure to follow the procedures of CPLR Article 75. Judicial disturbance of an arbitration award on the grounds that an arbitrator exceeded his powers is appropriate “only if the award violated a strong public policy, was totally irrational, or the arbitrator in making the award clearly exceeded a limitation on [his] power specifically enumerated under CPLR 7511(b)(1).” *Rice v. Jamaica Energy Partners, L.P.*, 13 A.D.3d 255 [1st Dept. 2004] (citing *New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 N.Y.2d 321, 326 [1999]).

“[A] court may vacate an arbitral award where strong and well-defined policy considerations embodied in constitutional, statutory or common law prohibit a particular matter from being decided or certain relief from being granted by an arbitrator.” *New York State Correctional Officers and Police Benev. Ass’n, Inc. v. State*, 94 NY2d 321, 327 [1999]. “A court, however, may not vacate an award on public policy grounds when vague or attenuated considerations of a general public interest are at stake.” *Id.* “Simply put then, the issue before this Court is not whether we agree with the arbitrator’s assessment of the evidence, interpretation of the contract or reasoning in fashioning the award.” *Id.* “We must focus on the result only, and can vacate the award if the arbitration agreement itself violates public policy; if the award intrudes into areas reserved for others to resolve; or if, because of its reach, the award violates an explicit law of this State.” *Id.* “Our

analysis cannot change because the facts or implications of a case might be disturbing, or because an employee’s conduct is particularly reprehensible.” *Id.*

Discussion

Applying those standards to the Petition herein, the Court finds that Petitioner fails to set forth a basis for disturbing the Decision. The Court rejects Petitioner’s argument that the Award violates public policy. Petitioner has failed to show a “strong and well-defined policy considerations embodied in constitutional, statutory or common law” that would warrant the Court to vacate the Award. *New York State Correctional Officers and Police Benev. Ass’n, Inc.*, 94 NY2d at 327.

Based upon the foregoing, the Petition for an order vacating the Award dated is denied. The Award dated August 26, 2020, in the matter of the *Arbitration between New York Transit Authority and United Transit Leadership Organization* (DAN 20-2324-0006) hereby is confirmed in all respect.

Wherefore it is hereby

ORDERED that the Petition to vacate the award dated August 26, 2020 (DAN 20-2324-0006) is denied and the cross-motion is granted and the arbitration award dated August 26, 2020 (DAN 20-2324-0006) is confirmed; and it is further

ORDERED and ADJUDGED that the arbitrator’s findings that “1. The Authority does not have just cause to discharge Jason Brown. 2. Jason Brown shall be reinstated subject to the provisions contained in this decision” are CONFIRMED.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: February 26, 2021

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION