Transit Supervisors Org. Local 106 v MTA Bus Co.
2021 NY Slip Op 32126(U)
November 3, 2021
Supreme Court, New York County
Docket Number: Index No. 655321/2021
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** **PART** **14**

Justice

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TRANSIT SUPERVISORS ORGANIZATION LOCAL 106

Petitioner,

- v -

MTA BUS COMPANY,

Respondent.

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INDEX NO. 655321/2021

MOTION DATE 10/29/2021

MOTION SEQ. NO. 001

DECISION + ORDER, JUDGMENT ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 6, 7, 8, 10, 11, 12 were read on this motion to/for VACATE ARBITRATION AWARD.

The petition to vacate an arbitral award on the grounds that the arbitrator exceeded her authority and that the award is irrational is denied.

Background

Petitioner is a party to a collective bargaining agreement with respondent. That agreement (the "CBA") provides a mechanism for the resolution of grievances. Petitioner claims that Michael Brienza worked for respondent and, in October 2019, he reported that he was suffering from back injuries, so he went on leave. Brienza was on Workers' Compensation status from December 11, 2019 until November 30, 2020. He was cleared to return to full duty on December 1, 2020 and called out sick on December 2, 2020. Petitioner contends that Brienza returned to work on December 3, 2020, reported a reoccurrence of his injuries on December 3 and went back on Workers' Compensation status from December 4, 2020 to date.

Brienza sought to cash out the five weeks of vacation time he purportedly accrued, and respondent denied this request. Petitioner then filed a grievance on Brienza's behalf asserting that respondent violated the CBA by denying the cash out of vacation time. Subsequently, petitioner (on Brienza's behalf) reduced its claim for a five-week vacation cash out to a two-week cash out and a roll over of the remaining three weeks. Petitioner also sought, in the alternative, to roll over all five weeks of purportedly accrued vacation time.

After a subsequent arbitration (held pursuant to the CBA), the arbitrator denied the grievance. Petitioner argues that the arbitrator deprived Brienza of a benefit to which he is entitled to under the CBA but was unable to use because he was on leave.

Respondent cross-moves to confirm the award and claims the arbitrator's decision was rational. It emphasizes that the arbitrator found that the parties had negotiated and agreed upon both the eligibility and the procedure for an employee to request a cash out of two weeks of unused vacation time; they also agreed upon the exceptions for when an employee could be granted any vacation allowance during a leave of absence. Respondent maintains that the arbitrator held that Brienza did not follow the correct procedure for seeking a cash out of the two weeks and that there were no provisions in the CBA that permitted employees who were out of work and getting Workers' Compensation payments to also get vacation payments.

Discussion

CPLR 7510 states that "The court shall confirm an award upon application of a party made within one year after its delivery . . . unless the award is vacated or modified upon a ground specified in section 7511."

"CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power, which occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, . . . even if the arbitrator misapplied the substantive law in the area of the contract" (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations or citations omitted]).

The Court's analysis begins, as it must, with the arbitrator's decision. The grievance here dealt with Brienza's ability to cash out the vacation time and whether he followed the correct process. The arbitrator noted that "[T]he parties' CBA does not contain any provision allowing for the cash out of five weeks of vacation as requested in the grievance, the Union amended the original position as set forth in the grievance to argue in its brief that Grievant should have received a cash out of two weeks of vacation with the remaining three weeks carried over to 2021, or all five weeks carried over to 2021" (NYSCEF Doc. No. 2 at 7-8).

She concluded that "It is undisputed that while on Workers' Compensation, Grievant did not select vacation options nor did he opt to receive a cash out of two weeks as required by Article 23(Q) [of the CBA]. On this record, the Union has provided no basis for inferring that an exception should be provided in this case to permit a cash out of two weeks of vacation benefits notwithstanding that Brienza failed to request it as required by the parties CBA" (*id*. at 8).

With respect to whether Brienza could, alternatively, carry over his five weeks of vacation to 2021, the arbitrator found that "the parties have indeed agreed to grant to the Company the unilateral right to deny a carryover of vacation time from one year to the next" and

"In any event, there is no evidence that Brienza ever made a request to carryover his vacation time from 2020 to 2021" (*id*. at 9).

The Court finds that the well-reasoned opinion by the arbitrator was rational and that there is no reason to vacate it. Put simply, this case is about whether an employee who was out on leave and did not request a cash out or a roll over of his vacation time should be eligible to do so anyway. The arbitrator rationally found that Brienza could not do so under the CBA and petitioner's mere disagreement with this conclusion is not a sufficient reason for this Court to vacate the award.

The dispute in this proceeding involved a contractual interpretation and the arbitrator carefully considered the wording of the CBA and the fact that Brienza did not follow the proper procedure when seeking his vacation time benefits. The Court disagrees with petitioner's contention that the arbitrator modified the terms of the CBA; rather the Court finds that the arbitrator correctly interpreted the CBA's provisions under Brienza's specific circumstances (where he was out on leave and did not request any vacation time or benefits).

Petitioner's claim that the award was irrational is also without merit. The arbitrator correctly found that Brienza did not follow the proper procedure for demanding a cash out of benefits or to roll over that vacation time. And, of course, this Court's role is only to consider whether the arbitrator's decision was rational, not whether this Court agrees with the ultimate decision. That petitioner may have strong arguments about the subject grievance is immaterial. Instead, the Court is permitted only to review the award and assess whether it was justified. This award was—in fact, the decision was extremely well reasoned—and this Court cannot substitute its own judgment for that of the arbitrator.

Accordingly, it is hereby

ADJUDGED that the petition to vacate the arbitral award dated July 21, 2021 is denied; and it is further

ADJDUGED that the cross-petition to confirm the subject July 21, 2021 award is granted and the subject award is confirmed.

11/3/2021
DATE

ARLENE BLUTH, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[X]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**