

**Manhattan & Bronx Surface Tr. Operating Auth. v
Transport Workers Union Local 100**

2023 NY Slip Op 33731(U)

October 23, 2023

Supreme Court, New York County

Docket Number: Index No. 452078/2022

Judge: Denise M. Dominguez

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. DENISE M DOMINGUEZ PART 21

Justice

-----X

MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY

Petitioner

- v -

TRANSPORT WORKERS UNION LOCAL 100

Respondent

-----X

INDEX NO. 452078/2022

MOTION SEQ. NO. 001

**DECISION AND ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

For the reasons that follow, the Petition by Petitioner-Employer, Manhattan and Bronx Surface Transit Operating Authority (the Authority) to vacate an arbitration award pursuant to CPLR 7511, is granted.

Background

This matter arises out of an employer-employee dispute. At arbitration, the Authority sought to terminate employee-bus driver, Kenneth Natton (the employee) based on his arrest, criminal conviction, and the nature of the charges.

On December 9, 2021, the employee plead guilty to the crime of Attempted Endangering the Welfare of a Child and was sentenced to complete a sex-offender counseling program. The underlying facts involve incidents on October 27, 2021 through November 1, 2021. The employee via an online dating site solicited and made numerous sexually explicit statements to a person the employee believed was a minor and explicitly admitted "it's fine that you're fourteen." Approximately five days later, on November 1, 2021, the employee and the alleged boy agreed to

meet in person near or about Central Park. Unknown to the employee, the young person was not a minor and was recording the encounter. Notably, the employee is recorded voluntarily disclosing that he is an MTA bus driver. The recording is then uploaded to YouTube. Upon learning of the arrest, the Authority suspended him. According to the Authority, the employee failed to report the arrest in violation of the Authority's rules. Instead, he lied and calling in sick the day of the arrest.

As per the collective bargaining agreement between the Authority and Respondent, Transport Workers Union Local 100 (the Union), arbitration is mandatory when the Authority seeks to discipline or terminate any employee. The arbitration hearing was held on February 17, 2022. The Arbitrator was to decide whether the Authority had just cause for disciplining the employee and if so whether termination as a bus driver was appropriate.

During the arbitration hearing, the Authority's attorney argued that the employee's criminal conviction and failure to report the arrest are violations of the Authority's rules of conduct. The attorney also argued that the Authority, a public entity entrusted with safely transporting millions of riders, including children and students under the age of 17, could not continue to entrust this employee to carry out his duties. As an MTA bus driver is an unsupervised position that requires safely transporting and interacting with the public. The Authority further argued that the YouTube video seen by over 70,000 viewers, created harm to the Authority's reputation in having a viral video depicting one of its employees as a child molester.

In opposition, the Union's attorney argued that the Authority lacked cause to discipline much less to seek his termination. As to the conviction, the Union argued that it showed the employee took responsibility for his actions. The Union also argued, there is no legal nexus to the workplace since the criminal conduct occurred off duty and outside the scope of employment. As to failing to report the arrest, the Union argued it was a minor offence considering his good work

record during his five-year employment. Regarding the video, the Union argued the Authority has not shown any meaningful adverse publicity causing loss of bus riders.

Arbitrator E. Pfeffer after hearing the evidence, reviewing the YouTube video, and the post-hearing briefs, rendered his full Opinion and Award on May 31, 2022. He found that the Authority had just cause to discipline. He also found that the employee's actions created adverse criticism for the Authority. The Arbitrator further found that based on compelling mitigating factors, the appropriate penalty was a time-served suspension without pay. The employee was also to complete the court-mandated Mustard Seed Program and report to the City of New York's counseling assistant program, EAP.

The Authority now moves to vacate the award pursuant to CPLR 7511. The Union opposes.

Discussion

Arbitration is highly favored in New York (*see* CPLR 7501; *Goldfinger v. Lisker*, 68 NY2d 225 [1986]). It provides parties with a neutral and partisan arbitrator who is sworn to hear and decide a dispute faithfully and fairly and provide the parties a speedy resolution without a lengthy, more formal, and often expensive court process (*see e.g.* CPLR 7501; CPLR 7506).

Thus, courts seldomly disturb arbitration awards even if the courts would have reached a different conclusion (*see Falzone v NY Central Mutual Fire Insurance Company*, 15 NY3d 530[2010]; *Goldfinger*, 68 NY2d 225). Unlike court rulings and decisions, arbitration awards are not vacated or modified on the grounds of newly discovered evidence or on the basis the arbitrator misapplying the facts, the rules of evidence, or the substantive applicable law (*see* CPLR 7501; *Falzone*, 15 NY3d 530; *Silverman v Benmor Coats*, 61 NY2d 299 [1984]; *Central Gen. Hosp. v. Hanover Ins. Co.*, 49 NY2d 950 [1980]; *see e.g.* CPLR 2221; CPLR 4404[b]).

Yet, while deference is given to an arbitrator's final determination, the integrity of the arbitration process is reviewable (*see Goldfinger*, 68 NY2d 225). An arbitration award may be vacated upon a judicial finding that the rights of one of the parties was prejudiced by one of three reasons, the partiality of the arbitrator; or by corruption, fraud, or misconduct on the part of the arbitrator; or by a finding that the arbitrator exceeded her or his powers (CPLR 7511). In *Goldfinger*, the Court of Appeals expressly held that "precisely because arbitration awards are subject to such judicial deference, it is imperative that the integrity of the process, as opposed to the correctness of the individual decision, be zealously safeguarded."

Here, the Arbitrator prepared a thorough 14-page Opinion and Award. In the first section, Discussion and Findings, the Arbitrator details the arguments made by both sides. However, the second section, the Opinion part, lacks neutrality.

In the Opinion section, the Arbitrator begins the first paragraph agreeing with the criminal court allocution that he "knowingly attempted to act in a manner likely to be injurious to the physical, mental or moral welfare of a child less than 17-year-old. He also finds that the employee's actions created adverse criticism for the Authority. Yet, the remaining four-and half pages of the Opinion are devoted to advocating for the employee's wellbeing and the importance of the employee's reintegration into the community.

In the second paragraph the Arbitrator begins "I simply cannot minimize the fact which compellingly mitigate against the employee's termination." The Arbitrator further states that "it is plain that a penalty of dismissal would effectively work "against the court condition that the employee participated in a program which supports his "reintegration to the community."

In the third paragraph, the Arbitrator states that the judge in sentencing the employee to a conditional discharge rather than incarceration or probation was "aid[ing] [the employee's]

recovery and rehabilitation...in contrast to [] social isolation. Based on that reasoning, the Arbitrator states that he seeks to impose a penalty consistent with those objectives.

In the fourth paragraph, the Arbitrator discusses the employee's convictions by choosing the following words "whatever issues may have impacted his private life and led to the conduct which resulted in his criminal conviction, there is no record [] to conclude that he is unable to maintain strict boundaries between his personal life and work."

In the fifth paragraph, the Arbitrator begins "in short, I have determined it is most appropriate here to impose a penalty which will support rather than frustrate the sentence. As noted by the court-ordered program, 'successful treatment encompasses every aspect of our clients' lives,' and its goal is 'to help them gain control of their lives in order to become productive and safe members of our community.'... His termination would undermine and potentially defeat that shared purpose."

The Arbitrator further states "indeed, what is striking here is the candor [the employee] has shown throughout his ordeal. I also consider the fact that no one was harmed by his wrongdoing, for the "victim" of his attempted crime was fictional.

Upon review and in accordance with *Goldfinger*, the crucial and essential aspects of neutrally and impartiality were not honored. The Arbitrator crossed the thin and often difficult line between a compassionate neutral and an advocate for one side, the employee. The Arbitrator mistakenly believed that his role was to render a decision that aided and supported the employee's re-integration into the community rather than fairly and objectively decide an employer-employee dispute. In doing so, the Arbitrator prejudiced the Authority's right to a fair and impartial arbitration process. Accordingly, the award is vacated on the grounds of partiality pursuant to CPLR 7511[b][1][ii].

It is hereby,

ORDERED that the Petition is granted, and the arbitration award is vacated; it is further

ORDERED that in compliance with the applicable collective bargaining agreement the matter is remitted expeditiously to arbitration with another arbitrator; and it is further

ORDERED that the Petitioner is to file and serve a notice of entry of this Order within 20 days in accordance with the court's electronic filing procedures.

10/23 /2023
DATE

CHECK ONE:

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE


HON. DENISE M. DOMINGUEZ
J.S.C.