SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS Part 25

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In the Matter of the Application of
Tawannah Jordan

PETITIONER,

For a Judgment Pursuant to Article 75 of the Civil Practice Law and Rules,

-against-

New York City Transit,

RESPONDENT.

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Index # 516876/2023
August 9, 2023 Cal. # 42 Mot. Seq. # 1

Index # 510230/2023
June 14, 2023 Cal. # 17 Mot. Seq. # 1

DECISION/ORDER

Recitation as per CPLR §§ 2219(a) and 3212(b) of Papers considered on Review of Motion:
NYSCEF Doc #s 1-16; 27-28 by Petitioner
NYSCEF Doc #s 18-26 Respondent's Opposition

Upon the foregoing cited papers and argument on June 14, 2023 and August 9, 2023, pursuant to CPLR Article 75: Petitioner's application to be reappointed to her position, restored to payroll, and any back pay owed Petitioner is deemed MOOT; and Petitioner's application for Arbitrator Elena Cacavas' May 18, 2023 Decision to be vacated is DENIED.

PROCEDURAL HISTORY

Petitioner is an employee with Respondent New York City Transit ("NYCT") and has worked as a Station Agent since November 11, 2000.[1] Petitioner was disciplined following an incident that resulted in a pre-disciplinary suspension from service pending arbitration.[2] More specifically, at another unrelated disciplinary hearing involving Petitioner, she was involved in a confrontation with the hearing officer during that unrelated disciplinary hearing.[3] As a result, the ensuing arbitration was then assigned to Elena Cacavas and a virtual arbitration hearing took place on December 29, 2022.[4]

Arbitrator Cacavas' January 10, 2023 award determination concluded that Defendant NYCT had just cause to discipline Petitioner. The decision stated, in pertinent part:

> "The Authority has just cause to discipline the Grievant. The appropriate penalty is an unpaid time-served suspension. The Grievant is to participate in an anger management program acceptable to the Authority, on notice that failure to do so, and to do so fully, shall be ground for discharge. The Grievant is on clear notice that any further act of physical or verbal

[1] NYSCEF Doc. # 1 at pg. 2.
[2] *Id.* at pg. 3.
[3] NYSCEF Doc. # 5 at pg.'s 4-5. Defendant NYCT alleged that Petitioner became confrontational, menacing, physically and verbally aggressive and insubordinate and Petitioner alleged she became agitated after being instigated by the hearing officer's conduct.
[4] *Id.*

> aggression in her capacity as an Authority employee, or any further act of insubordination, shall be grounds for her immediate dismissal from employment."[5]

Petitioner subsequently filed an Article 75 Petition on April 4, 2023, under Index No. 510230/2023, with caption *Tawannah Jordan v. New York City Transit*, *et al.*, requesting an Order to reappoint Petitioner to her position, restore Petitioner to payroll and for any back pay owed to Petitioner.[6] Petitioner contends that once concluding her "time-served suspension", she reasonably expected to be restored to payroll and then participate in the required anger management program. However, after serving the suspension and enrolling in an anger management program, NYCT explained that they would not restore Petitioner to payroll until she fully completed an anger management program.[7]

Petitioner also filed a contract grievance to enforce Arbitrator Cavacas' January 10, 2023 award, claiming that the award stated she would be restored to payroll after serving her suspension.[8] On or about April 20, 2023, Petitioner's contract grievance was heard by Arbitrator Richard Adelman who remanded the dispute back to Arbitrator Elena Cacavas for adjudication.[9]

Following a May 11, 2023 hearing before Arbitrator Cacavas on the dispute, she issued the May 18, 2023 opinion and award ("the Award").[10] Said Award concluded in pertinent part:

> "The Authority did not violate the Collective Bargaining Agreement when it continued the Grievant's unpaid suspension from service during her participation in a mandated anger management treatment program. The Grievance is denied."[11]

Petitioner then filed another Article 75 Petition on June 8, 2023, under instant Index No. 516876/2023, with caption *Tawannah Jordan v. New York City Transit*, requesting an Order to vacate the May 18, 2023 Arbitration Award, stay the implementation and enforcement of the Award, and award Petitioner cost and attorney's fees.[12]

POSITION OF THE PARTIES

Petitioner claims that Arbitrator Cacavas' May 18, 2023 award contains misstatements of fact, unsubstantiated conclusions, and attributes legal positions to Petitioner that are not supported by the evidentiary record.[13] It is Petitioner's contention that the Award was rendered in violation of the Collective Bargaining Agreement ("CBA"), as Arbitrator Richard Adelman is designated as the Impartial

[5] NYSCEF Doc. # 5 at pg. 23.
[6] NYSCEF Doc. # 9.
[7] NYSCEF Doc. # 1 at pg. 3.
[8] NYSCEF Doc. # 7.
[9] NYSCEF Doc. # 10.
[10] NYSCEF Doc. # 3.
[11] *Id.* at pg. 8.
[12] NYSCEF Doc. # 1.
[13] NYSCEF Doc. # 1 at pg. 5.

Arbitrator and should have decided Petitioner's contractual grievance.[14] Petitioner further contends that Arbitrator Cacavas exceeded her authority, that the Award was based on a false premise[15] and therefore Petitioner was prejudiced by fraud and misconduct, and that the Award is irrational.[16]

Respondent counters that Petitioner has not stated any grounds for vacating the Award because judicial review of arbitration awards is extremely limited and that Petitioner's claims do not warrant a vacatur since her claims are unpersuasive, unsupported by the record, and mischaracterize Arbitrator Cacavas' Award.[17] In reply, Petitioner contends that she has stated grounds for vacating the Award, as it is clear that the Award was not impartial, was based on a false premise, and was imperfectly executed because a definite award on anger management completion was not made.[18]

DISCUSSION

"Judicial review of arbitration awards is extremely limited." *Sheriff Officers Ass'n, Inc., ex rel. Ranieri v. Nassau County*, 113 A.D.3d 620 (2d Dept. 2014) (quoting *Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 N.Y.3d 471 [2006]). When determining any matter arising under CPLR Article 75, the Court will not consider whether the claim in which arbitration is sought is tenable, or otherwise decide the merits of the dispute. *Id.* at 621; *See* CPLR § 7501. Therefore, courts are not to interpret the substantive condition of a contract[19] and an arbitration award must be upheld when the arbitrator "offers even a barely colorable justification for the outcome reached." *Wien & Malkin LLP*, 6 N.Y.3d at 479 (quoting *Matter of Andros Cia. Maritima, S.A. (March Rich & Co., A.G.)*, 579 F.2d 691 [2d Cir. 1978]).

There are three recognized grounds that may form the basis for vacating an arbitrator's award: that it is irrational, violates public policy, or clearly exceeds a specifically enumerated limitation on the arbitrator's power. *Sheriff Officers Ass'n, Inc.,* 113 A.D.3d at 621. An award "is irrational only where there is no proof whatsoever to justify the award,"[20] and "even where an arbitrator has made an error of law or fact, courts generally may not disturb the arbitrator's decision." *Rivera v. New York City Tr. Auth.*, 216 A.D.3d 644 (2d Dept. 2023). The "party seeking to overturn an arbitration award bears a heavy burden and must establish a ground for vacatur by clear and convincing evidence." *Bd. of Educ. of Yonkers City School Dist. v. Yonkers Fedn. Of Teachers*, 180 A.D.3d 1041 (2d Dept. 2020).

Here, Petitioner failed to establish by clear and convincing evidence that the arbitration award should be vacated. There are no grounds to vacate Arbitrator Cacavas' Award, as it was not irrational, did not violate public policy, and did not exceed a specifically enumerated limitation on the arbitrator's power. It is clear from the record that Petitioner disagreed with NYCT's implementation of the January

[14] *Id.* at pg.'s 4-5.
[15] *Id.* at pg. 6 (Petitioner argues that the Award is based on the false premise that EAP's Policy Instructions Apply to Anger Management Counseling by mutual consent or past practice).
[16] *Id.* at pg.'s 7-8.
[17] NYSCEF Doc. # 18.
[18] NYSCEF Doc. # 27.
[19] *Matter of United Fedn. Of Teachers, Local 2, AFT, AFL-CIO v. Bd. Of Educ. Of City School Dist. of City of New York*, 1 N.Y.3d 72 (2003).
[20] *Reddy v. Schaffer*, 123 A.D.3d 935 (2d Dept. 2014).

10, 2023 Award and had a differing interpretation of what the disciplinary process from that Award entailed given her January 23, 2023 filing of a contract interpretation grievance form.[21]

On April 14, 2023, a "Step II Decision"[22] was issued, which stated, in pertinent part:

> "A threshold issue that must be decided in this matter is whether Grievant's claim is properly a contract interpretation grievance. If the answer to that question is no, this matter needs no further review. That being the case, the ***matter properly belongs before Arbitrator Cacavas***,[23] who heard the underlying discipline case in the first place. This is because, Section 2.1(A)(1) of the Parties' CBA states, in relevant part, the following:
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> 'A Contract Interpretation Grievance is hereby defined to be a complaint on the part of any covered employee or group of such employees that there has been on the part of Management, non-compliance with or a misinterpretation of any of the provisions of this Agreement or of any written rule, or Policy/Instruction of the Authority governing or affecting its employees, or that any run or work schedule imperils the health or safety of employees. ***A contract interpretation shall not include any claim subject to the Disciplinary Grievance Procedure***.' (Emphasis added)."

It can only be inferred that Arbitrator Adelman remanded the dispute to Arbitrator Cacavas based on this decision and the procedures of the parties' CBA because Arbitrator Cacavas was the Arbitrator who issued the January 10, 2023 Award.[24] Thus, Arbitrator Cacavas did not exceed her power and did not violate the terms of the CBA.[25]

Petitioner failed to provide any evidence to support her claims of irrationality. The January 10, 2023 and May 18, 2023 Awards are explicitly connected. In determining the January 10, 2023 Award, Arbitrator Cacavas considered multiple forms of evidence, including documentary evidence, video evidence of the incident, and witness testimony from Petitioner and three other witnesses involved in the incident.[26] In determining the May 18, 2023 Award, Arbitrator Cacavas considered the testimony of Anita Briant-Napier, Director of Labor Relations for Stations (who testified to NYCT's practices of having employees complete anger management programs) and various email communications regarding the commencement of the anger management program, which Petitioner introduced.[27] Therefore, both

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[21] *See* NYSCEF Doc. # 7 (where Petitioner stated that "NYCT is not abiding by 01/12/2023 opinion and award from Arbitrator E. Cacavas").
[22] NYSCEF Doc. # 24 (Step II in the parties' CBA is described, in relevant part: "In the event that the matter is not satisfactorily adjusted with the Department Head, the employee or his/her Union representative may, within five (5) days after the receipt of written notification from the Department Head of his/her decision, submit the dispute in writing, by completing a form provided by the Authority, to the Authority's Deputy Vice President, Labor Disputes Resolution or his/her designee. The appeal shall be heard within thirty (30) days after the receipt of the written request by the Deputy Vice President, Labor Disputes Resolution or his/her designee. The Deputy Vice President, Labor Disputes Resolution or designee shall within twenty (20) days after such hearing is closed, render his/her decision in writing").
[23] Emphasis added.
[24] NYSCEF Doc. #s 24-25; Doc. # 5.
[25] *See Sheriff Officers Ass'n, Inc.,* 113 A.D.3d at 621-622.
[26] NYSCEF Doc. # 5 at pg.'s 4-17.
[27] NYSCEF Doc. # 3 at pg.'s 4-5.

Awards were supported by evidence in the record and are not irrational. *Barrella v. State*, 175 A.D.3d 495 (2d Dept. 2019); *Transit Workers Union, Loc. 100 v. New York City Transit Auth.*, 152 A.D.3d 530 (2d Dept. 2017).

Finally, Petitioner failed to provide any evidence to support her claims of partiality. "An arbitrator's partiality may be established by an actual bias or the appearance of bias from which a conflict of interest may be inferred." *David v. Byron*, 130 A.D.3d 772 (2d Dept. 2015). Here, Petitioner merely makes generalized allegations such as "it is clear from the Award that petitioner was not treated in a fair and impartial manner by Arbitrator Cacavas. She showed partiality towards the respondent and penalized the petitioner for proceeding pro se."[28] *See Piller v. Eisner*, 173 A.D.3d 1035 (2d Dept. 2019) ("Mere allegations do not meet the petitioner's heavy burden of showing arbitrator misconduct or partiality by clear and convincing proof").

Therefore, Petitioner's Article 75 requesting vacatur of the May 18, 2023 Award is DENIED. Given this Decision, Petitioner's Article 75 filed April 4, 2023, under Index No. 510230/2023, requesting reappoint to her position, restoral to payroll and for any back pay owed Petitioner, is hereby moot.

This constitutes the Decision and Order of the Court.

Date: January 4, 2023
Brooklyn, New York

Hon. Patria Frias-Colón, J.S.C.

[28] NYSCEF Doc. # 1 at pg. 8.