Matter of Garcia v Manhattan & Bronx Surface Tr. Operating Auth.
2025 NY Slip Op 33857(U)
October 6, 2025
Supreme Court, New York County
Docket Number: Index No. 659409/2024
Judge: Verna L. Saunders

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS** **PART** **36M**

Justice

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INDEX NO. 659409/2024

MOTION SEQ. NO. 001, 002

In the Matter of the Application of
CELSO GARCIA,

Petitioner,

- v -

MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY, TRANSPORT WORKERS UNION, LOCAL 100,

Respondent.

DECISION + ORDER ON MOTION

For an Order Pursuant to Article 75 of the CPLR Vacating the Decision and Penalty Imposed by an Arbitration Award.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 35, 37

were read on this motion to/for **VACATE AWARD**.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 32, 36, 38

were read on this motion to/for **DISMISS**.

On April 11, 2024, petitioner, a bus operator with respondent Manhattan and Bronx Surface Transit Operating Authority (the, "Authority")[1], was served with disciplinary charges (DAN 24- 3622-0137 and DAN 24- 3622-0138) related to an accident on March 4, 2024, where petitioner is alleged to have struck two parked vehicles while operating bus number 348 in Bronx County. Based on video surveillance, after striking the parked vehicles, petitioner stopped the bus, exited, looked at the rear of the bus and the parked vehicles on the street and then reboarded the bus and proceeded in route. It is further alleged that petitioner failed to call the Command Center to report the accident as required and did not report the incident on his trip sheet. Prior to the subject collision, petitioner allegedly ran two red traffic signals. In a written statement to the Authority, petitioner indicated that he had "had no knowledge of the incident that occurred on or about March 4, 2024." Petitioner was placed on suspension on April 11, 2024.

On August 26, 2024, Transport Workers Union, Local 100 (the, "Union") and the Authority proceeded to arbitration, pursuant to the parties' collective bargaining agreement, to answer the question of whether the Authority had cause to discharge petitioner and, if not, the appropriate remedy. The arbitrator noted that both parties appeared by counsel and had a full opportunity to adduce evidence, cross-examine each other's witnesses, and make arguments in support of their respective positions. Additionally, the parties each submitted post-hearing

[1] The Authority is a statutory subsidiary of the New York City Transit Authority.

briefs. The arbitrator concluded the following: "[b]ased on my review of the record evidence, including my assessment of witness credibility and the probative value of evidence, I find the Employer has shown cause for a fifteen (15) day suspension for the preventable accident and has shown cause for discharge for the other charges."

Petitioner commenced this special proceeding, pursuant to CPLR Article 75, for a judgment vacating the penalty imposed by the arbitration award dated September 17, 2024 (DAN Nos. 24-3622-0137 and 24-3622-0138), arguing that the penalty imposed is irrational and violates due process. Specifically, petitioner contends that the arbitrator failed to "hold the [r]espondent to the just cause standard by accepting an investigation in which [p]etitioner was never properly interviewed, reviewing and considering evidence that was ultimately excluded and denying [p]etitioner a proper pre arbitration hearing wherein [r]espondent investigators did not act as decision makers" (NYSCEF Doc. No. 2).

The Authority interposes an answer in this proceeding, wherein it maintains that the challenge to the arbitration award, premised on Article 75, which involves compulsory arbitration awards, is not the appropriate standard for the relevant issues at hand. Moreover, it asserts that judicial review of arbitration awards is extremely limited and that petitioner fails to set forth a basis to challenge the subject arbitration award. The Authority, therefore, requests that the petition be dismissed and that the award be confirmed (NYSCEF Doc. No. 22, *Authority answer*).

The Union opposes the petition and moves, separately, for dismissal of the pleadings pursuant to CPLR 7510. It argues that the petition must be dismissed for failure to state a claim because the petitioner may not bring a claim for a breach of fair representation against the Union under Article 78. Moreover, even were the court to find that breach of the duty of representation is appropriate under Article 75, the Union nevertheless contends that petitioner lacks standing to bring the instant petition because it is undisputed that the Union provided representation and represented the petitioner during the arbitration proceeding and petitioner fails to establish that the Union breached its duty of fair representation (NYSCEF Doc. No. 20, *memo of law in support of motion*).

In opposition to respondent's motion, petitioner argues that, contrary to respondent's assertion, petitioner has no claim alleging a breach of the Union's duty of fair representation. Rather, petitioner asserts that "the Union's animus towards him in his Verified Petition [is set forth] as a basis for standing in this forum." Moreover, petitioner maintains that he has properly alleged standing under Article 75 "as he has properly alleged that [the Union] violated its duty of fair representation." Petitioner also contends that the arguments raised by respondents are premature in a pre-answer motion to dismiss and that its motion "relies on facts that are not pleaded nor based on any affidavit in the record." Petitioner also argues that the Union must raise it arguments regarding its "inactions" with the New York State Public Employment Board[2] (NYSCEF Doc. No. 36, *opposition*).

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[2] In reply, respondent represents that, on February 18, 2025, it received notice of petitioner's Public Employment Relations Board (PERB) charge against it for the breach of the duty of fair representation (NYSCEF Doc. No. 38 ¶ 3).

In reply, respondent argues that claims premised on alleged failure to represent claims must be brought in a plenary action and not an Article 75 proceeding, which petitioner does not dispute. Inasmuch as petitioner has failed to assert any causes of action against the Union nor provided a basis in which the Union should be a party to this matter, the Union argues that dismissal is warranted. Moreover, the Union maintains that a pre-answer motion to dismiss the Article 75 petition is an appropriate application that this court may consider giving the court the authority to find that petitioner lacks standing to bring this proceeding. While respondent agrees that the pleadings on a motion to dismiss are to be construed broadly, when, as here, the claims are contradicted by the record, they are not entitled to the presumption of truth. And further, that contrary to petitioner's contention, the record demonstrates that the Union represented petitioner at the arbitration and that its actions were not arbitrary, discriminatory or in bad faith (NYSCEF Doc. No. 38, *reply*).

Petitioner opposes the motion, arguing that when respondent Manhattan and Bronx Surface Transit Operating Authority ("Authority") and the Union entered into a collective bargaining agreement ("CBA") that creates a grievance procedure, petitioner, who is subject to the CBA, may sue the Authority directly for breach of the CBA if the union fails in its duty of fair representation. Specifically, petitioner contends that the Union refused to file grievances when the Authority repeatedly violated petitioner's due process rights throughout the investigation and pre-arbitration process as detailed in the CBA. Petitioner also argues that the Union refused to testify at the arbitration regarding petitioner's rights to due process as contained the CBA. This, argues petitioner, led the arbitrator to erroneously conclude that his due process rights were not violated, finding that "[g]rievant ha[d] strong and vocal Union representation on the shop floor. He had multiple opportunities to tell his side of the story if he wanted to, both before and after the supervisor(s) determined he was culpable of the charges. He had the right to write a G-2 Statement, to demand a Step hearing, and/or to challenge his pre-disciplinary suspension before an impartial arbitrator. He also had the opportunity to tell his version of events before me at arbitration. I performed a de-novo review of the evidence at arbitration, including Grievant's version of events. I find Transit has established the charges by a great preponderance of the evidence." (NYSCEF Doc. No. 6).

"As a general proposition, when an employer and a union enter into a collective bargaining agreement that creates a grievance procedure, an employee subject to the agreement may not sue the employer directly for breach of that agreement but must proceed, through the union, in accordance with the contract. Unless the contract provides otherwise, only when the union fails in its duty of fair representation can the employee go beyond the agreed procedure and litigate a contract issue directly against the employer" (*Board of Education v Ambach*, 70 N.Y.2d 501, 508 [1987]). Therefore, "in general, an employee has no standing to initiate an arbitration-related proceeding where the employee is not a signatory to the contract which provides that the union, rather than the individual employees, has the sole right to arbitrate, and where the union and the government agency, rather than the employee, participate in the arbitration" (*Matter of Donas v New York City Dept. of Envtl. Protection*, 2018 NY Slip Op 51192(U), *12 [Sup Ct, NY 2018], see *In re Soto*, 7 NY2d 397, 399-400 [1960]; *Matter of Jiggetts v New York City Human Resources Admin.,* 156 AD3d 552, 552-53 [1st Dept 2017]). Stated differently, "[w]hen a union represents employees during arbitration, only that union — not individual employees — may seek to vacate the resulting award" (*Matter of O'Reilly v Board*

of Educ. of the City Sch. Dist. of the City of N.Y., 213 AD3d 560, 565 [1st Dept 2023]; *see Matter of Moreira-Brown v New York City Bd. of Educ.*, 288 AD2d 21[1st Dept 2001]).

An exception lies when an employee claims or shows that the Union breached its duty of fair representation (see *Matter of O'Reilly v Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 213 AD3d 560, 565 [1st Dept 2023]; *Moreira-Brown v N.Y. City Bd. of Educ.*, 288 AD2d 21, 21 [1st Dept 2001]). "Traditionally, . . . fair representation claims are asserted in plenary actions in which the court is asked to determine both whether the union's duty was breached and whether the collective bargaining agreement was violated" (*Matter of Obot [New York State Dept. of Correctional Services]*, 89 NY2d 883, 886 [1996]).

Here, petitioner has failed to establish that he has standing to initiate the arbitration-related proceeding herein since he has not demonstrated an independent right under the CBA to initiate the instant proceeding (*see Chupka v Lorenz-Schneider Co.*, 12 NY2d 1, 6 [1962]). Furthermore, while the specific claims asserted against the Union are unclear it appears to be premised on fair representation but, "even assuming that petitioner had a viable fair representation claim[,]. . . a proceeding to vacate the arbitration award [is] not the proper forum for asserting it" (*Henvill v Metropolitan Transp. Auth.*, 148 AD3d 460, 461 [1st Dept 2017], quoting *Matter of Obot [New York State Dept. of Correctional Servs.]*, 89 NY2d 883, 886 [1996]). Inasmuch as petitioner has failed to set forth a basis to vacate the subject award (see CPLR 7511), the petition is hereby dismissed, and the award is confirmed. Accordingly, it is hereby

ORDERED and **ADJUDGED** that the petition is denied and dismissed; and it is further

ORDERED that the motion of Transport Workers Union, Local 100 seeking dismissal of the petition is granted; and it is further

ORDERED and **ADJUDGED** that the award in favor of respondent MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY, dated September 17, 2024 relating to DAN#24-3622-0137 and DAN# 24-3622-0138, is confirmed; and it is

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for respondents shall serve a copy of this decision and order, with notice of entry, upon all parties.

October 6, 2025

HON. VERNA L. SAUNDERS, JSC

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