2016 IL App (1st) 152571-U
No. 1-15-2571
December 6, 2016

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

CHICAGO TRANSIT AUTHORITY, a Municipal corporation,	)	Appeal from the Circuit Court Of Cook County.
Plaintiff-Appellant,	)	No. 14 CH 10496
v.	)	
AMALGAMATED TRANSIT UNION, LOCAL 241,	)	The Honorable Thomas R. Allen, Judge Presiding.
Defendant-Appellee.	)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Where an arbitrator's written award shows that he based his decision on his interpretation of the contract, mere error in the interpretation does not justify vacating the award.

¶ 2 Laid off members of the bus drivers' union filed a grievance against the Chicago Transit Authority (CTA), accusing it of breaching the collective bargaining agreement (CBA) between the union and the CTA. An arbitrator ruled in favor of the drivers and ordered the

CTA to pay compensatory damages. The CTA filed a complaint for review of the arbitration award. The circuit court upheld the award. On appeal, the CTA contends that the arbitrator exceeded his authority by finding a violation of the CBA and by awarding damages. We find that the award drew its essence from the CBA, and therefore we affirm the circuit court's judgment upholding the award.

¶ 3 BACKGROUND

¶ 4 Full-time bus operators (FTBOs) drive most CTA buses. Some time before 1985, the CTA started using part-time bus operators (PTBOs) on many routes. Both FTBOs and PTBOs belong to Local 241 of the Amalgamated Transit Union (Union). An arbitration in 1985 resulted in a ruling that the CTA could hire more PTBOs (who cost less per hour than FTBOs) until PTBOs made up 12.5% of the CTA's workforce, and the PTBOs could work as much as 20 hours per week. The CTA later pressured the Union to make further concessions, and, by 1990, the CBA between the CTA and the Union permitted the PTBOs to work up to 30 hours per week. The Union later agreed that PTBOs could make up 25% of the workforce. Sometime after 2004, the Union agreed that PTBOs could work up to 32 hours per week. Throughout the 1980s, 1990s and 2000s, the CTA used some PTBOs for more than the number of hours permitted by the CBAs.

¶ 5 The CTA and the Union signed a new CBA to cover the period from 2007 through 2011. The parties agreed:

> "[3.6 I] (L) Part-time employees in the Local 241 bargaining unit will not work more than thirty-two (32) hours per week except in cases of emergencies or authorized trades.

* * *

> [3.6 II] A. To address the high rates of absenteeism which continue to pose difficulties in staffing and require greater flexibility in the use of part-time employees, the maximum number of part-time bus operators shall not exceed twenty-five (25) percent of the number of full-time bus operators. ***
>
> * * *
>
> [13.15] All present working conditions shall remain in effect during the term of this Agreement, unless a desired change is agreed to by the parties."

¶ 6 On February 7, 2010, the CTA laid off 903 members of the Union, amounting to about 14% of the CTA employees the Union represented. The Union informed the CTA that it would object to any subsequent breach of the provisions in the CBA limiting the hours PTBOs may work. The CTA continued to give work to PTBOs, employing many for more than 32 hours per week. On February 24, 2010, Darryle West, acting "on behalf of the operators laid off on February 7, 2010, who should not have been laid off when work is available," filed a grievance accusing the CTA of violating Article 3.6 I(L) of the CBA.

¶ 7 The parties proved unable to resolve the grievance amicably. They submitted the grievance to arbitration under the CBA, choosing Raymond McAlpin to arbitrate the dispute. The parties stipulated that he should decide "Did the CTA violate Section 3.6 I(L) when it worked various part-time bus operators over 32 hours in work weeks since January 24, 2010 and continuing throughout the present?" and "If so, what shall be the appropriate remedy?" McAlpin held evidentiary hearings on January 6, 2012, March 26, 2012, and April 24, 2012.

The parties submitted written briefs. McAlpin issued his written decision on March 27, 2014.

¶ 8 McAlpin summarized the parties' positions. The Union contended that it had in the past objected to the CTA's violations of the provisions limiting the use of PTBOs to 20, then to 30, then to 32 hours per week, and the CTA had acknowledged the contractual limit and professed an intent to comply. According to McAlpin, the Union noted that the CBA allowed for exceptions to the 32 hour limit in case of emergency, but the CTA had shown no emergency to justify the breaches after the February 2010 layoffs. McAlpin recorded the CTA's response, that because of chronic absenteeism, the "serious manpower shortage" following the layoffs constituted an emergency.

¶ 9 McAlpin wrote:

> "The key language is in the Collective Bargaining Agreement Section 3.6(I)(L) ***. Part-time bus operators *** may not work more than 32 hours per week with two exceptions – emergencies and authorized trades. *** [T]he Union was very lenient for a long period of time to give the Employer an opportunity to fill the holes in its bus operations due to an extremely high level of absenteeism. This met the terms of establishing a practice ***.
>
> *** [M]any of the clerks took the easy way out giving assignments to those who seemed to be most available, whether or not it followed the criteria of the Collective Bargaining Agreement. It is clear that part-time bus operators were well over the limits, particularly after the February, 2010 layoff, even though the Union grievances put the CTA on notice that 3.6 I (L) would be strictly enforced.

***

A review of the record in this case does not convince the Arbitrator that either waiver or estoppel exists. The Union can certainly be credited with trying to assist the CTA in this area of the management of the business. ***

***

Certainly, a past practice existed here, but past practice governs only when the language is not clear and past infractions do not justify current infractions without the Union's agreement or at least acquiescence. That has not been shown here. The CTA went beyond the 32-hour rule when it was advantageous to its operations. There were longstanding and routine violations from February 24, 2010 and forward, after the Union put the CTA on notice that no more violations would be tolerated subsequent to that date.

*** The Arbitrator would also note that the layoff has recently been eliminated and all employees are now recalled. ***

The record shows that part-time bus operators and full-time bus operators lost work opportunities. Also, full-time bus operators lost pension contributions. The CTA acted at its own peril. *** Certainly, the Employer cannot achieve through arbitration what it failed to achieve through negotiations. *** The start date for the make whole remedy is May 24, 201[0] which gave the CTA a reasonable time period to correct its violations. The end date is January 27, 2012, the date the last full-time bus operator was recalled.

* * *

1. The Violation Hours for calculation of damages is 236,430.9;

2. 131,182 Violation Hours should be paid to underutilized PTBOs ***;

3. 105,248.5 Violation Hours should be paid to the FTBOs ***; [and]

4. CTA must remit its pension contribution for the hours paid on behalf of the FTBOs."

¶ 10 On June 23, 2014, the CTA filed a complaint under the Uniform Arbitration Act (710 ILCS 5/12 (West 2014)), asking the circuit court to vacate the arbitration award. The Union filed an answer and a cross-petition to enforce the award. Both parties filed motions for summary judgment. The circuit court denied the CTA's motion and granted the Union's motion for summary judgment, confirming McAlpin's award. The CTA filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 The CTA argues that McAlpin (1) "exceeded his authority by determining that the Union could unilaterally modify a past practice;" (2) erred in determining that the parties' past practice did not govern this situation;" and (3) erred by awarding speculative damages."

¶ 13 In *Griggsville-Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, our supreme court restated the principles governing review of arbitration awards:

" '[A] court's review of an arbitrator's award is extremely limited.' *American Federation of State, County & Municipal Employees v. State*, 124 Ill. 2d 246, 254 (1988) (AFSCME). Where ' "the parties have contracted to have disputes

settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept." ' *Id*. at 255 (quoting *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987)). Thus, a court has ' "no business weighing the merits of the grievance." ' *Misco*, 484 U.S. at 37 (quoting *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564, 568 (1960)).

' "Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." ' *AFSCME*, 124 Ill. 2d at 254-55 (quoting *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)).

Establishing that an arbitrator has failed to interpret the collective-bargaining agreement but has, instead, imposed his own personal views of right and wrong on an employment dispute is 'a high hurdle.' *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. ___, ___, 130 S. Ct. 1758, 1767 (2010). It is not enough to show that the arbitrator 'committed an error—or even a serious error.' *Id*. at ___, 130 S. Ct. at 1767. It must be shown that there is no 'interpretive route to the award, so a noncontractual basis can be inferred and the award set aside.

> [Citations.] The zanier the award, the less plausible it becomes to ascribe it to a mere error in interpretation rather than to a willful disregard of the contract.' *Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc.*, 935 F.2d 1501, 1506 (7th Cir. 1991). Whether an arbitrator has exceeded the scope of his authority and has reached a decision that fails to draw its essence from the collective-bargaining agreement is a question of law." *Griggsville*, 2013 IL 113721, ¶¶ 18-20.

¶ 14 Whenever possible, we must "construe arbitration awards so as to uphold their validity." *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001).

¶ 15 The CTA, in its initial statement of its arguments, ignores the standards for our review of arbitration awards. The CTA states twice that the arbitrator "erred," but error provides no grounds for vacating an arbitration award. *Griggsville*, 2013 IL 113721, ¶ 20. "[E]ven where the award is based upon the arbitrator's misreading of the contract, the court must uphold the award so long as the arbitrator's interpretation is derived from the language of the contract." *Amalgamated Transit Union, Local 241 v. Chicago Transit Authority*, 342 Ill. App. 3d 176, 180 (2003). Following *Griggsville*, we confine our review to the issue of whether any interpretive route could lead from the CBA to the award. To use the *Griggsville* court's alternate phrasing, we review to determine whether we can infer from the award that McAlpin willfully disregarded the CBA.

¶ 16 McAlpin's reasoning in the written award shows that he interpreted the language of the CBA, and he did not base the award on "a body of thought, feeling, policy, or law outside of the contract." *Illinois State Toll Highway Authority v. International Brotherhood of*

Teamsters Local 700, 2015 IL App (2d) 141060, ¶ 30. The CTA asked McAlpin to read the CBA as though the past practice clause nullified the clause restricting the hours of PTBOs. McAlpin noted that the CTA did not obtain through negotiation the complete removal of limits on the hours of PTBOs. In McAlpin's view, the past practice included the Union and the CTA working cooperatively to resolve staffing problems, and the CTA deviated from past practice by imposing by its sole fiat new terms that allow for no limitation whatsoever on its use of PTBOs. McAlpin's interpretation of the past practice clause qualifies as an interpretation of the CBA, and not as a willful disregard of the CBA.

¶ 17 The CTA also objects to the award on grounds that McAlpin did not specifically address the CTA's argument that because of chronic absenteeism that had affected the CTA for years, once the CTA laid off 903 bus drivers, manpower shortages created an emergency within the meaning of the CBA, and the emergency permitted the CTA to use PTBOs for more than 32 hours per week. McAlpin addressed both of the issues the parties presented for arbitration. See *Edward Electric Co. v. Automation, Inc.*, 229 Ill. App. 3d 89, 99-100 (1992). Arbitrators need not give reasons for their decisions. *Bosack v. Soward*, 586 F.3d 1096, 1104 (9th Cir. 2009); *Quick & Reilly, Inc. v. Zielinski*, 306 Ill. App. 3d 93, 99-100 (1999). McAlpin responded with tactful silence to the CTA's argument about the meaning of "emergency." The lack of an explicit response does not constitute a reason for disturbing the arbitration award. We find that an interpretive route led from the CBA to the finding that the CTA violated the CBA. See *County of Tazewell v. Illinois Fraternal Order of Police Labor Council*, 2015 IL App (3d) 140369, ¶ 16. Accordingly, we uphold McAlpin's finding that the CTA violated the CBA.

¶ 18 The CTA also claims that McAlpin awarded speculative damages. The CTA cites in support only cases that did not arise on review of arbitration awards. See *Jones v. Hyrn Development, Inc.*, 334 Ill. App. 3d 413 (2002); *Beerman v. Graff*, 250 Ill. App. 3d 632 (1993); *Feldstein v. Guinan*, 148 Ill. App. 3d 610 (1986); *De Koven Drug Co. v. First National Bank of Evergreen Park*, 27 Ill. App. 3d 798 (1975). In effect, the CTA asks us to review the damage award under standards applicable to the review of an award following a trial in the circuit court.

¶ 19 Our supreme court adopted the following language from *United Steelworkers*, 363 U.S. at 597:

> "When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency." *United Steelworkers*, 363 U.S. at 597, quoted in *AFSCME*, 124 Ill. 2d at 254-55.

¶ 20 Federal decisions help guide our interpretation of the Uniform Arbitration Act. *Federal Signal Corp. v. SLC Technologies, Inc.*, 318 Ill. App. 3d 1101, 1111-12 (2001). The United States Court of Appeals for the Fifth Circuit said:

> "[T]he federal judiciary must *** defer to the arbitrator's decision on the merits of the dispute ***.
>
> ***

> *** Furthermore, the arbitrator must also be left free to decide more than which party is right or which party is wrong. Having found a contract violation, he must fashion a remedial order to bring the parties' actions in conformity with the contract and make reparation for past infringements. A collective bargaining agreement may not specify the relief required for every conceivable contractual violation, so the arbitrator must often rely on his own experience and expertise in formulating an appropriate remedy. In view of the variety and novelty of many labor-management disputes, reviewing courts must not unduly restrain an arbitrator's flexibility." *Local 369, Bakery & Confectionary Workers International Union v. Cotton Baking Co.*, 514 F.2d 1235, 1237 (5th Cir. 1975).

¶ 21 McAlpin found that the CTA's violation of the contract caused employees to lose compensation for hours they could have worked, if the CTA had acted in accord with its contractual obligations. The Union and the CTA stipulated to the calculation of the hours given to PTBOs in excess of 32 hours per week from May 2010 through January 2012. Here, as in *Local 369*,

> "the arbitrator concluded that the company's work assignment policies denied the union members work opportunities to which they were entitled under the contract. Not only were fewer union members drawing salaries from the company because of this arrangement, but the job security of all union members was indirectly [a]ffected because there were fewer jobs to 'bump down' to in the event of layoffs. After examining these circumstances, the arbitrator determined that the union was monetarily damaged and ordered an appropriate award. The

> record indicates that the contract authorized arbitration of the dispute in question and supports the arbitrator's choice of remedies." *Local 369*, 514 F.2d at 1238.

¶ 22 In accord with *United Steelworkers, Local 369*, and the standards restated in *Griggsville*, we find no sufficient ground to disturb the arbitrator's award.

¶ 23 CONCLUSION

¶ 24 McAlpin did not willfully disregard the terms of the CBA. He fashioned a remedy designed to compensate union members for work opportunities they lost because the CTA violated the CBA. The award drew its essence from the CBA. Accordingly, we affirm the trial court's judgment upholding the arbitrator's award.

¶ 25 Affirmed.