DOCKET NO. FST CV 23 6062471S : SUPERIOR COURT

CITY OF STAMFORD : JUDICIAL DISTRICT

: STAMFORD/NORWALK

V.

: AT STAMFORD

STAMFORD PROFESSIONAL
FIREFIGHTERS ASSOCIATION,
LOCAL 786, IAFF : APRIL 22, 2024

MEMORANDUM OF DECISION RE:
APPLICATION TO VACATE ARBITRATION AWARD (100.31) AND
CROSS APPLICATION TO CONFIRM ARBITRATION AWARD (106.00)

Before this court is the plaintiff City of Stamford's (the City), application to vacate an arbitrator's award to the defendant Stamford Professional Firefighter's Association, LO, Local 786 (the Union). The application to vacate is made pursuant to General Statutes §§ 52-418 and 52-420 and Practice Book § 23-1. Also before the court, is the defendant's cross application to confirm the same award pursuant to General Statutes §§ 52-419 and 52-420. Both applications have been argued and submitted.

The parties do not disagree with the following essential facts. The parties entered into a collective bargaining agreement (Agreement) between the City and the Union covering the period of July 1, 2011 through June 30, 2019. The Agreement contained Article XV, entitled "Job-Connected Injuries/Restrictive Duty," which stated in relevant part that: "Except as provided to the contrary by law, there shall be a [rebuttable] presumption that any respiratory disease, heart disease, hypertension or cancer resulting in total or partial disability to an employee shall be presumed to have been suffered in the performance of his/her duties." See

Docket No. 107.00, Page 69. Article VI, entitled "Grievance Procedure," provides in relevant part: "In addition to all disciplinary grievances, the Union and the City shall also each have the ability to utilize the services of the American Arbitration Association . . ." See Docket No. 107.00, Page 53. Complete

At all relevant times, Jonathan Cunningham was a Firefighter in the City's Fire Department, a position represented by the Union and covered by the Agreement. On or about September 15, 2020, Cunningham filed a claim with the Connecticut Workers' Compensation Commission. He claimed that he had suffered the injury of Kahler's disease (a multiple myeloma). On August 30, 2022, the Union filed a grievance relating to the application of Article XV § 2 to Cunningham. Specifically, the Union alleged that the City had violated Article XV § 2 of the Agreement by failing to honor the presumption that Cunningham's injury was suffered in the performance of his duties. The City denied the grievance and the Union subsequently appealed it to arbitration to the American Arbitration Association (AAA).

The parties arbitrated the matter on April 11, 2023. During the proceedings, the parties agreed on the following submission: "Did the [C]ity violate Article 15, Section 2 of the collective bargaining agreement? If so, what shall the remedy be, consistent with the collective bargaining agreement?" On or about June 30, 2023, the Arbitrator issued a written memorandum of decision and award (the award). The award stated: "The grievance is upheld. The City did violate Article XV § 2 of the collective bargaining agreement. The City is ordered to enter into a voluntary agreement with the Grievant accepting the compensability of the Grievant's cancer injury claim." See Docket No. 107.00, Page 189.

General Statutes § 52-418 (a) (4) provides in relevant part: "Upon the application of any party to an arbitration, the superior court for the judicial district in which one of the parties resides . . . shall make an order vacating the award . . . if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made."

Arbitration is a contractual remedy. Therefore, ". . . the powers of the arbitrator are determined by the parties themselves, [and] judicial review of such arbitration awards is limited in scope. . . [A] court is bound by the award of the arbitrator unless it falls within the proscriptions of § 52-418 of the General Statutes, or procedurally violates the parties' agreement." (Citations omitted; internal quotation marks omitted.) *O&G/O'Connell Joint Venture* v. *Chase Family Limited Partnership No. 3*, 203 Conn. 133, 154, 523 A.2d 1271 (1987). "The question for this court is not whether the arbitrator decided the issues correctly but only whether the issues were submitted for her to decide . . . [A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of authority, the award must be enforced. The arbitrator's decision cannot be overturned even if the court is convinced that the arbitrator committed serious error . . . [A]s long as the arbitrator's remedies were consistent with the agreement they were within the scope of submission." (Citations omitted; internal quotation marks omitted.) *Blondeau* v. *Baltierra*, 337 Conn. 127, 158–59, 252 A.3d 317 (2020).

"[A] claim that the arbitrators have exceeded their powers may be established under § 52-418 in either one of two ways: (1) the award fails to conform to the submission, or, in other words, falls outside the scope of the submission; or (2) the arbitrators manifestly disregarded the law." (Internal quotation marks omitted.) *Harty* v. *Cantor Fitzgerald & Co.*, 275 Conn. 72, 85,

881 A.2d 139 (2005). "The standard for reviewing a claim that the award does not conform to the submission requires what we have termed in effect, de novo judicial review . . . The de novo label in this context means something very different from typical de novo review because review under this standard and in this setting is limited to a comparison of the award to the submission." (Citation omitted; internal quotation marks omitted.) *Blondeau* v. *Baltierra*, supra, 337 Conn. 155.

Both our appellate court and Supreme Court have provided guidance concerning whether a submission was restricted or unrestricted. See, *Exley* v. *Connecticut Yankee Grayhound Racing, Inc.*, 59 Conn. App. 224, 229, 775 A.2d 990, cert denied, 254 Conn. 939, 761 A.2d 760 (2000) ("To determine whether an arbitration award conforms to the parties' submission to arbitration, we must first determine whether the submission was restricted or unrestricted"); *Industrial Risk Insurers* v. *Hartford Steam Boiler Inspection & Ins. Co.*, 258 Conn. 101, 111, 779 A.2d 737 (2001) ("[The Supreme Court] consistently has concluded that submissions that require arbitrators to determine whether a party has violated a particular section of a collective bargaining agreement constituted unrestricted submissions").

Moreover, our courts have gone on to say that: "[w]here the submission does not otherwise state, the arbitrators are empowered to decide factual and legal questions and an award cannot be vacated on the grounds that the construction placed upon the facts or the interpretation of the agreement by the arbitrators was erroneous. Courts will not review the evidence nor, where the submission is unrestricted, will they review the arbitrators' decision of the legal questions involved." Id., 115. Likewise, our courts have gone on to say that: "[a]rbitration awards . . . are not to be invalidated merely because they rest on an allegedly erroneous interpretation or application of the relevant collective bargaining agreement it . . .

Rather, in determining whether the arbitration award draws its essence from the collective bargaining agreement, the reviewing court is limited to considering whether the collective bargaining agreement, rather than some outside source, is the foundation on which the arbitral decision rests . . . If that criterion is satisfied . . . then [the court] cannot conclude that the arbitrator exceeded his authority or imperfectly executed his duty." (Internal quotation marks omitted.) *Burr Road Operating Co. II, LLC* v. *New England Health Care Employees Union, District 1199*, 162 Conn. App. 525, 535, 131 A.3d 1238 (2016). In the present case, the City's arguments concern the manner in which the arbitrator arrived at her conclusions. "We, therefore, review these claims to determine only whether they show a patent infidelity by the arbitrator to his obligation to interpret and apply the collective bargaining agreement." Id., 537.

Of course, there remain important limitations. "[A]n 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." (Internal quotation marks omitted.) *Hudson Wire Co.* v. *Winsted Brass Workers Union*, 150 Conn. 546, 553, 191 A.2d 557 (1963). "If, for example, there was evidence that revealed that [the arbitrator] had reached his decision by consulting a ouija board, [it would] not suffice that the award conformed to the submission . . . It must be emphasized, however, that merely claiming inconsistency between the agreement and the award will not trigger judicial examination of the merits of the arbitration award. Rather, in the face of such a claimed inconsistency, the court will review the award only to determine whether it draws from the collective bargaining agreement." (Internal quotation marks omitted.) *Teamsters Local Union No. 677* v. *Board of Education*, 122 Conn. App. 617, 624–25, 998 A.2d 1239 (2010).

The City claims that the submission in this action gave the arbitrator the authority to determine only the question of whether the City violated Article XV, § 2 of the Agreement. The City further contends that even if the award answers the question posed by the issue submission, the arbitrator was bound by the express language of that section which specifically limits the arbitrator to the express terms of the Agreement and sets forth that the arbitrator shall not have the power to modify, amend, or delete any terms or provisions of the Agreement.

In the instant case, the City urges that the arbitrator failed to follow this mandate. Finally, the City contends that the arbitrator improperly found that the parties agreed that the City will have the burden of proving that there is a nonemployment cause of the injury when the injury is unclear. The City states that it presented evidence demonstrating that there is no indication that employment was the cause.

The Union first responds that this issue was properly determined within the scope of the arbitrator's authority because: (1) the City's right to contest the rebuttable presumption exists only when it has evidence that the injury is unrelated to employment, (2) the parties contractually agreed that the arbitrator shall determine whether the City rebutted this presumption, and (3) the City presented evidence confirming that it is impossible to determine the cause of the injury. The Union claims that, under the terms of the Agreement, the City failed to meet its burden of presenting sufficient evidence to rebut the presumption that the injury is employment related.

The City's reply argues that ultimately, the court's decision in *Stamford* v. *Stamford Professional Firefighters Assn., Local 786*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-21-6054778-S (July 7, 2022, *Krumeich, J.T.R.*), supports the City's application to vacate on the grounds that "[t]he agreement . . . merely [required] that the City

had evidence that the injuries were not work-related . . ." Id. This court disagrees with the breadth of the City's interpretation of that decision. In that action, the court determined that "[t]he Arbitrator in essence found that the City did not have rebuttal evidence that the grievant's hypertension was not work-related and therefore was required under the agreement to concede that it was work-related . . . The remedy fashioned by the Arbitrator was within her authority under the submission and consistent with her interpretation of the agreement . . . and the failure to concede the work-relatedness of the injury absent rebuttal evidence *sufficient to determine it was unrelated to employment* to overcome the presumption." (Emphasis added.) Id.

In the present case, the arbitrator's decision to uphold the grievance was based on two determinations, namely, (1) her interpretation and application of the provisions of the Agreement governing the contractual rebuttable presumption; and (2) her conclusion that the City did not overcome the presumption by offering a report of Dr. Powers that found: "There is not sufficient evidence to decide that the Grievant's cancer was caused by his employment." The arbitrator concluded that the report was inconclusive as to the cause of injury and that, thus, the City presented the arbitrator with no basis to find that his cancer was caused by something other than his employment.

"A rebuttable presumption is equivalent to prima facie proof of a fact and can be rebutted only by the opposing party's production of sufficient and persuasive contradictory evidence that disproves the fact that is the subject of the presumption." *Schult* v. *Schult*, 40 Conn. App. 675, 684, 672 A.2d 959 (1996), aff'd, 241 Conn. 767, 669 A.2d 134 (1997). "[T]he fact which is specified to be prima facie evidence of the fact to be inferred or presumed must be a fact which in common experience leads naturally and logically to the fact inferred or presumed. In the mind of the trier, the proof of one must produce the belief that it is more probable than not that the

other, the ultimate fact, is thereby established." *Mott's Super Markets, Inc.* v. *Frassinelli*, 148 Conn. 481, 490, 172 A.2d 381 (1961).

Since the submission at issue in this case was unrestricted, the court is limited to comparing the arbitration award to the submission to determine whether the award is within the submission's scope. The award states: "The grievance is upheld. The City did violate Article XV §2 of the collective bargaining agreement. The city is ordered to enter into a voluntary agreement with the Grievant accepting the compensability of the Grievant's cancer injury claim." Additionally, the award states that it is the [full statement of all claims submitted to arbitration].

In comparing the award to the submission, there is no evidence that the decision was outside the scope of the submission. Further, Article XV § 2, which is the submission to arbitration, provides: "Except as provided to the contrary by law, there shall be a rebuttable presumption that any respiratory disease, heart disease, hypertension or cancer resulting in total or partial disability to an employee shall be presumed to have been suffered in the performance of his/her duties." The court cannot interpret the provisions of the Agreement to decide if the award was inside or outside the submission. *Comprehensive Orthopaedics & Musculoskeletal Care, LLC* v. *Axtmayer*, 293 Conn. 748, 755, 980 A.2d 297 (2009); *Blondeau* v. *Baltierra*, supra, 337 Conn. 158–59.

Additionally, the City's assertion that the award is outside the submission requested is unpersuasive. The court has not been presented with evidence that the award manifests an infidelity to the arbitrator's obligation. *Burr Road Operating Co. II, LLC* v. *New England Health Care Employees Union, District 1199*, supra, 162 Conn. App. 537; *Teamsters Local Union No.*

677 v. *Board of Education of City of Danbury*, supra, 122 Conn. App. 624–25. Thus, the arbitrator was empowered to find that the defendant was entitled to the award.

The application to confirm the award is granted, and the application to vacate the award is denied. So ordered.

John Kavanewsky

Kavanewsky, J.
J.T.R.

Decision entered in accordance with the foregoing 4/22/2024
Notice sent to all counsel of record 4/22/2024

Victoria Cucci
Victoria Cucci
Temporary Assistant Clerk