

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

UNITED INDUSTRIAL, SERVICE,	)	
TRANSPORTATION, PROFESSIONAL	)	
AND GOVERNMENT WORKERS OF	)	
NORTH AMERICA, SEAFARERES	)	CASE NO. SX-13-CV-205
INTERNATIONAL UNION, AFL-CIO obo	)	
EDDIS BENNETT,	)	
	)	ACTION TO VACATE
Plaintiff,	)	ARBITRATOR'S AWARD
	)	
v.	)	
	)	
GOVERNMENT OF THE VIRGIN	)	
ISLANDS, DEPARTMENT OF	)	
EDUCATION,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION & ORDER DENYING MOTION TO DISMISS

THIS MATTER is before the Court on Defendant Government of the Virgin Islands, Department of Education (DOE)'s Motion to Dismiss Amended Complaint and Incorporated Memorandum of Law (Motion), filed December 2, 2016; Plaintiff United Industrial, Service, Transportation, Professional and Government Workers of North America (Union)'s Motion Opposing Defendant's Second Motion to Dismiss, filed January 10, 2017; and DOE's Reply thereto, filed January 24, 2017.

Background

Plaintiff's Complaint alleges that Eddis Bennett was employed by the Department of Education as a custodian at Central High School for approximately five years prior to February 7, 2012, when he was suspended and placed on unpaid leave status for "fighting."¹ Complaint ¶¶ 5, 12.² Plaintiff further alleges that following a "grievance meeting" between DOE, the Union, and Bennett at which DOE decided to uphold Bennett's temporary suspension, the parties proceeded to arbitration on the unresolved issue of whether Bennett was entitled to collect his pay for the period of his suspension.

¹ While the precise nature of the "fighting" for which Bennett was suspended is not clear from the allegations of the Complaint, for reasons discussed below, this issue is immaterial to the Court's ruling on the Motion.

² All citations to "Complaint" herein are references to Plaintiff's Amended Complaint, filed October 17, 2016.

Although no copy of the controlling collective bargaining agreement (CBA) has yet been submitted to the Court by either party, the Union alleges, and DOE does not deny that:

Article IX, Section 14 of the CBA states in full: "If an employee is discharged he shall be removed from the payroll effective the date of discharge, notwithstanding the filing of any grievance challenging the discharge. If an employee is suspended for cause, his right to compensation shall remain unaffected until a grievance challenging the suspension has been disposed of, or the time limit in which to file a grievance has expired, whichever occurs earlier."

Id. ¶ 6.

Similarly, although no copy of the arbitrator's decision has been submitted, the Union alleges, and DOE does not contest, that on April 4, 2013, the arbitrator issued an Opinion and Award finding, *inter alia*: 1) the only issue for the arbitrator to decide is "what happens to the Grievant's compensation while on a suspension and when does the final disposition for a grievance challenging the suspension occur;" and 2) the Union was correct that the CBA requires that "an employee who is involved in a proceeding for suspension shall not have any losses in pay until the final disposition of the grievance." *Id.* ¶ 12.

As alleged by the Union, despite the conclusion of the arbitrator's Opinion and Award that DOE was to "Cease and Desist withholding the compensation of an employee suspended until a grievance challenging the suspension has been disposed of, or the time limit in which to file a grievance has expired, whichever occurs earlier," DOE ignored the Union's formal request and refused to disperse to Bennett his back pay for the period of his suspension. *Id.* ¶ 13-15. In response, the Union submitted to the arbitrator a Motion for Clarification requesting that he issue a new order clarifying that the April 4, 2013 Opinion and Award requires DOE to disperse back wages to Bennett which were wrongfully withheld during the period of his suspension. *Id.* ¶ 16.

However, the Union alleges that on May 28, 2013, the arbitrator denied its Motion for Clarification, stating that:

The issue of just cause was not before this Arbitrator. Only if the DOE violated the Collective Bargaining Agreement by suspending the Grievant without pay prior to the final determination of the matter by the Employer. The Arbitrator agreed with the Union and issued a cease and desist order. The suspension, length of time and amount withheld was a moot subject. The suspension without pay was already served. There is absolutely not one good reason why the Government should now reinstate the Grievant with back pay and then turn around and suspend him without pay, once again, to comply with how the sequence of event [sic] should have

occurred, now that this Arbitrator's decision is final.

Id. ¶ 17.

Finally, the Union alleges that in issuing this denial of its Motion for Clarification, the arbitrator exceeded the scope of his authority under the CBA, "only to interpret, apply or determine compliance with the express provisions of this Agreement, [and not] to add to, detract from, or alter its provisions in any way." *Id.* ¶ 25.

Legal Standard

The Supreme Court of the Virgin Islands has established a three-pronged analysis to be used in reviewing motions to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6):

First, the court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either legal conclusions couched as factual allegations or naked factual assertions devoid of further factual enhancement. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief. If there are sufficient remaining facts that the court can draw a reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible.

Joseph v. Bureau of Corrections, 54 V.I. 645, 649-650 (V.I. 2011) (internal quotations and citations omitted); *see also Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 471-472 (V.I. 2013).

Discussion

The Supreme Court of the Virgin Islands has, *in dicta*, expressed reservations concerning the application of the Federal Arbitration Act (FAA) to disputes in the Virgin Islands.³ Yet, this Court has ruled that binding precedent of the Third Circuit, sitting as the *de facto* court of last resort for the Virgin Islands, nonetheless establishes the applicability of the provisions of the FAA in the Superior Court, unless and until the Supreme Court of the Virgin Islands expressly holds otherwise. *See Prentice v. Seaborne Aviation*, 2016 V.I. LEXIS 127, at *9, n.2 (V.I. Super. Ct.

³ *See Gov't of the V.I. v. United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, 2016 V.I. Supreme LEXIS 2, at *14 n.3 (V.I. Jan. 13, 2016) (quoting *Allen v. Hovensa, L.L.C.*, 59 V.I. 430, 443 n.2 (V.I. 2013)). The Supreme Court expressed its reservations and questioned the applicability of the FAA; however, in both cases the Court expressly declined to decide the issue. *Allen*, 59 V.I. at 443 n.2 ("since Allen's claim fails regardless of whether section 2 of the FAA preempts the VIWCA, we need not make this determination for the first time on appeal"); *United Indus., Svc.*, 2016 V.I. Supreme LEXIS 2, at *14 n.3 ("because the result would remain the same regardless of whether the FAA is applicable to this case, we decline to reach the issue as part of this appeal").

Sept 1, 2016) (citing *Gov't of the V.I. v. United Indus. Workers, N.A.*, 169 F.3d 172, 173 (3d Cir. 1999) (“the provisions of the FAA and the standards developed by our jurisprudence in reviewing arbitrations under the FAA are enforceable in the Territorial Court”)).

Similarly, while the Supreme Court has specifically questioned the applicability of 9 U.S.C. § 10—the provision of the FAA establishing the highly deferential standard for reviewing arbitrators’ awards in the context of actions for *vacatur*—it has also expressly declined to decide the issue; holding instead that in the context of the particular case before it, the arbitrator clearly exceeded his authority even under the FAA’s deferential standard by imposing his own brand of industrial justice. *Gov't of the V.I. v. United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, 64 V.I. 312, 326 (V.I. 2016) (“We need not decide whether this deferential standard of review should apply, however, because the arbitrator clearly exceeded his powers under the collective bargaining agreement, 9 U.S.C. § 10(a)(4), to the extent that he imposed his ‘own brand of industrial justice’ rather than attempting to apply the terms of the collective bargaining agreement”). Thus, despite this clear expression of reservation in *dicta*, in the absence of any definitive holding from the Supreme Court that courts of the Virgin Islands are to apply some other standard when reviewing actions to vacate arbitration awards, this Court remains bound to follow the binding precedent of the Third Circuit establishing the applicability of the FAA in the territorial courts, including the provisions of 9 U.S.C. § 10.

As articulated by the Supreme Court of the Virgin Islands:

In Volt Info. Sciences, Inc. v. Board of Trs., 489 U.S. 468, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989), the Supreme Court of the United States confirmed that in creating the FAA “Congress’ principal purpose [was] ensuring that private arbitration agreements are enforced according to their terms.” *Id.* at 478. The Court has expressly held that an arbitrator exceeds his powers, providing grounds for vacating the arbitral decision and award under 9 U.S.C. § 10(a)(4), “when [an] arbitrator strays from interpretation and application of the agreement and effectively ‘dispense[s] his own brand of industrial justice.’” *Major League Baseball Players Ass’n v. Garvey*, 532 U.S. 504, 509, 121 S. Ct. 1724, 149 L. Ed. 2d 740 (2001) (quoting *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960)).

United Indus., Svc., 64 V.I. at 326.

In this case, accepting all of the Union’s factual allegations as true, it is clear that Article IX, Section 14 of the CBA establishes that, “[i]f an employee is suspended for cause, his right to

compensation shall remain unaffected until a grievance challenging the suspension has been disposed of, or the time limit in which to file a grievance has expired, whichever occurs earlier.” Complaint ¶ 6. It is equally clear that the arbitrator, in his April 4, 2013 Opinion and Award, interpreted this provision as unambiguously establishing that Bennett, who was suspended for cause, was entitled to compensation at his normal rate of pay during the period of his suspension.

However, in contrast to the April 4, 2013 Opinion and Award in which the arbitrator systematically and logically derived his opinion from the unambiguous, plain language of the CBA, the arbitrator’s May 28, 2013 denial of the Union’s Motion for Clarification, without reference to any provision of the CBA, appears to be based instead on the arbitrator’s own personal notions of “mootness” and practicality. While acknowledging that reinstatement of Bennett’s back pay for the period of his suspension “should have occurred” in order to strictly comply with the CBA, the arbitrator found “absolutely not one good reason” to issue an order to that effect; presumably accepting without questioning DOE’s *post hoc* determination that Bennett was to be disciplined by means of suspension without pay for precisely the length of time it had taken DOE to process his grievance.

Leaving aside the myriad of policy considerations and compromises represented by the terms of the CBA itself, at this stage of the litigation, the Union has presented factual allegations from which the Court may plausibly infer that the Union is entitled to relief. The fact that the May 28, 2013 arbitral opinion denying the Union’s Motion for Clarification is so entirely untethered from and devoid of reference to the underlying CBA, and appears, even on its face, to directly contradict the express provisions of the CBA, plausibly gives rise to an inference that the arbitrator exceeded the scope of his authority under the CBA. In turn, the Union has sufficiently alleged that the May 28, 2013 arbitral opinion “strays from interpretation and application of the agreement and effectively ‘dispense[s] [its] own brand of industrial justice,” and, therefore, that the Union is entitled to relief by its action for *vacatur*. See *United Indus., Svc.*, 64 V.I. at 326 (citations omitted).

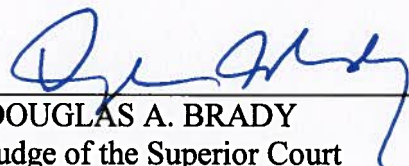
Thus, the allegations presented in the Union’s Amended Complaint and the reasonable inferences which may be drawn therefrom present a plausible claim for relief. Accordingly, DOE’s Motion must be denied.

Accordingly, in light of the foregoing, it is hereby

ORDERED that Defendant Government of the Virgin Islands, Department of Education's Motion to Dismiss Amended Complaint and Incorporated Memorandum of Law is DENIED. It is further

ORDERED that Defendant shall file its Answer to the Amended Complaint no later than twenty-one (21) days after the date of entry of this Order.

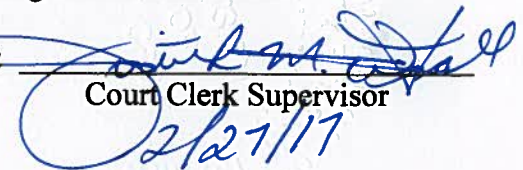
Dated: February 27, 2017



DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 

Court Clerk Supervisor
2/27/17