

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

UNITED INDUSTRIAL, SERVICE,
TRANSPORTATION, PROFESSIONAL AND
GOVERNMENT WORKERS OF NORTH
AMERICA SEAFARERS INTERNATIONAL
UNION, AFL-CIO, obo EDDIS BENNETT,

Plaintiff,

v.

GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF EDUCATION,

Defendant.

Case No. SX-13-CV-205

ACTION TO VACATE
ARBITRATOR'S AWARD

**MEMORANDUM OPINION and ORDER DENYING RELIEF AND DISMISSING
COMPLAINT FOR VACATUR OF ARBITRATOR'S AWARD**

THIS MATTER is before the Court following the Parties' Joint Submission of Record (JR), filed June 15, 2018, and full briefing on the merits, as follows: Plaintiff United Industrial Workers-Seafarers International Union's (Union) Brief Seeking Relief from Arbitrator's Award, filed July 16, 2018; Defendant Government of the Virgin Islands, Department of Education's (DOE) Motion to Dismiss and Response to the Plaintiff's Brief Seeking Relief from Arbitrator's Award, filed July 31, 2018; and Plaintiff's Reply, filed August 13, 2018. For the reasons set forth below, the Court finds the Arbitrator's Award is not subject to vacatur and, as such, Plaintiff's Amended Complaint will be dismissed with prejudice.

LEGAL STANDARD

Virgin Islands law recognizes the common law right of contracting parties to determine to select binding arbitration as the mechanism by which disputes arising from their relationship will be resolved. Judicial review of arbitration awards is limited, and "the basic objective in this area is ... to ensure that... arbitration agreements, like other contracts, are enforced according to their terms and according to the intentions of the parties." *Gov't of Virgin Islands, Dep't of Educ. v. St. Thomas/St. John Educ. Administrators' Ass'n, Local 101, o.b.o. Forde*, 67 V.I. 623, 638 (V.I. 2017) (citations and internal quotations omitted). As such, "a trial court plays 'only a limited role' when reviewing an arbitration award, in that trial courts 'are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on

misinterpretation of the contract' because they 'do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts.'" *Id.* 67 V.I. at 629, quoting *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 36, 38 (1987). Specifically, "in order to insure that parties who bargain for binding arbitration receive the benefit of their bargain, ...the Superior Court may only vacate an arbitrator's award if: (1) the arbitrator exceeded his or her authority in rendering the award (which may include ignoring limits in the arbitration agreement itself on issues to be arbitrated or remedies the parties agreed to make available); (2) if the award was the product of fraud, partiality, or malfeasance on behalf of the parties or the arbitrator—or if the award was predicated upon a mistake flowing from such conduct; or (3) if the arbitrator manifestly disregards the law. *Id.* 67 V.I. at 639-40.¹ In the absence of such a finding, the reviewing court must affirm an arbitrator's award. Here, the Union asks the Court to vacate the April 4, 2013 Opinion and Award of Arbitrator Marc Winters and to impose an award of restitution of back pay to its member for the period of his disciplinary suspension.

BACKGROUND

The parties agree that their dispute is governed by a Collective Bargaining Agreement (CBA) entered into between the Union and DOE (and other departments of the Government of the Virgin Islands). JR Exhibit 1. On or about February 8, 2012, Eddis Bennett, a five year custodial employee of St. Croix Central High School, was suspended and placed on unpaid leave status for conduct including a verbal and physical confrontation with a student and threats to co-workers. JR Ex. 11, at 2, 4. Bennett filed a grievance on March 6, 2012 protesting the suspension and unpaid leave status. JR Ex. 2. On March 21, 2012, a grievance meeting was held between the Union and DOE which resulted in DOE upholding Bennett's suspension without pay until May 4, 2012,

¹ Prior to the Supreme Court's July 20, 2017 decision in *Gov't of the VI (DOE) v. St. Thomas/St. John EAA*, Superior Court review of arbitral awards was governed by binding precedent of the United States Court of Appeals for the Third Circuit, sitting as the de facto court of last resort for the Virgin Islands in *Gov't of the V.I. v. United Indus. Workers, N.A.*, 169 F.3d 172, 173 (3d Cir. 1999), holding that the provisions of the Federal Arbitration Act (9 U.S.C. §§ 1-16) and standards developed by Third Circuit jurisprudence, including standards for vacating an award in arbitration under FAA § 10, were enforceable in the Superior Court. In *Gov't of the VI (DOE) v. St. Thomas/St. John EAA*, the Supreme Court determined that, while substantive provisions of the FAA preempt local law, § 10 represented a procedural rule that does not preempt local law in local courts and, following a *Banks* analysis, adopted as the common law rule for Virgin Islands, the noted standard for vacatur of an arbitration award. Memorandum and Opinion entered herein on February 27, 2017 denied DOE's Fed. R. Civ. P. 12(b)(6) (through Super Ct. R. 7) Motion to Dismiss (prior to the adoption of the Virgin Islands Rules of Civil Procedure) finding that the Union's Amended Complaint set forth a plausible claim for relief under the then applicable standards.

without a recommendation that Bennett be terminated. JR Ex. 6. Dissatisfied with DOE's determination, the Union initiated arbitration by letter of May 14, 2012. JR Ex. 7. An oral hearing before Arbitrator Winters was conducted March 27, 2013, wherein the Union did not object to the "merits of the just cause for the suspension itself," but only disputed whether Bennett's uncontested suspension should be with or without pay. Opinion and Award, JR Ex. 11, at 5. The question of Bennett's pay status during the suspension was determined in accordance with the terms of Article IX, Section of the CBA, which states in pertinent part: "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.* at 1, 3, 6; JR Ex. 1 at 26.

On April 4, 2013, Arbitrator Winters issued his Opinion and Award, wherein he determined that the "issue here is then a straightforward matter of contract interpretation," such that he must "ascertain and give effect to the mutual intent of the parties." JR Ex. 11, at 4. Interpreting the CBA according to the applicable language, the Arbitrator determined that "DOE shall 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." Because the Union did not challenge the suspension, the Arbitrator ruled that the grievance had been "disposed of" on the date "when the Employer has concluded its investigation..." Here, "final disposition" was achieved as of "the final determination of the matter by the Employer. Or, in other words, May 4, 2012, when the Grievant's suspension is completed and he is returned back to work on May 7, 2012." *Id.* at 6. The Arbitrator concluded: "Since the suspension period is over; and the DOE had agreed to put the Grievant back to work on May 7, 2012; and the Union is no longer contesting the just cause of the suspension itself; the only remedy left in granting this Grievance is a Cease and Desist order." *Id.* at 7.

The Union filed a Motion for Clarification on May 4, 2012, seeking clarification that the Opinion and Award entitled Bennett to "back wages and all emoluments of his employment that were wrongfully withheld during the period of his suspension." JR Ex. 13, at 2. The Arbitrator denied the motion, stating that because the issue of just cause for the suspension had not been challenged by the Union, "The suspension, length of time and amount withheld was a moot subject" and that "This Arbitrator's decision is for all future similarly situated occurrences." JR Ex. 15.

DISCUSSION

In reviewing the Union's claim, the Court reviews each of the potentially permissible grounds for vacatur of the Opinion and Award.

The Arbitrator did not exceed his authority in rendering the Award (including ignoring limits on issues to be arbitrated or remedies the parties agreed to make available).

The Union argues that the Arbitrator's Opinion and Award "fails to draw its essence from the CBA." Plaintiff's Brief, at 7. The Union notes that "Defendant, Plaintiff and Arbitrator agree that it was a straightforward matter of contract interpretation." Plaintiff's Reply, at 2. The Union concedes that "the Arbitrator identified the contested provision of the CBA, correctly interpreted its meaning, and made a factual finding concerning the duration of the harm." Plaintiff's Brief, at 8. Yet, the Union argues that the Arbitrator's determination that the issue of restitution for lost wages was moot was a "misconstruction of the CBA." *Id.* at 10. The Union claims that the Arbitrator exceeded the authority granted by the CBA, ostensibly by ignoring the remedy of restitution of back pay the parties agreed to make available. Yet, the Award did not ignore, but rather denied, the restitution claim. It is the Arbitrator's interpretation of the CBA terms in declining to award back pay restitution with which the Union finds fault.

The Union also cites the Award's order that DOE "Cease and Desist withholding the compensation of an employee suspended until a grievance challenging the suspension has been disposed of," claiming that the Arbitrator "has added a new term to the CBA" and acted "utterly in excess of his authority." The Arbitrator found that "[t]he Union is correct" that the CBA language contemplated that a properly suspended employee "shall not have any losses in pay until the final disposition of the grievance," but further found that "[t]he Union's interpretation of when the grievance is disposed of... is misplaced and misguided." JR Ex. 11, at 6.

In its "limited role" in this matter, this Court is "not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." *United Paperworkers*, 484 U.S. at 36. It is the determination of the Arbitrator deeming the restitution claim moot of which the Union complains, based not upon the Arbitrator's exceeding his authority in rendering the Award, but rather upon the Arbitrator's interpretation of the CBA terms. The Union's claim of error in the Arbitrator's perceived "misconstruction of the CBA" is insufficient to permit vacatur of the Opinion and Award on that ground.

The Award was not the product of fraud, partiality, or malfeasance on behalf of the parties or the Arbitrator.

In its Reply, the Union states that the Arbitrator's refusal to "clarify" the Award to grant back pay "gives hint that the Arbitrator's motivation in issuing his award evidently was something other than interpretation and enforcement of the Contract." Plaintiff's Reply, at 3. This veiled, unexplained suggestion of some impropriety in the Arbitrator's motives fails to even raise an issue that the Opinion and Award was the product of fraud, partiality, or malfeasance on behalf of a party or the Arbitrator, or that it was predicated upon a mistake flowing from such conduct. As such, the Opinion and Award will not be vacated on this ground.

The Arbitrator did not manifestly disregard the law.

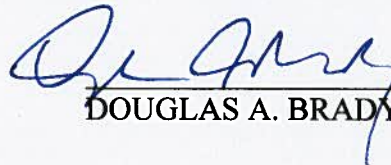
The Union does not claim that the Arbitrator has disregarded applicable law. Rather, as noted above, the Union acknowledges that Arbitrator Winters identified and correctly interpreted the contested provision of the CBA but erred in its application by failing to award restitution to Bennett. As the Union does not allege that the Arbitrator disregarded applicable law, no relief is available on this basis.

CONCLUSION

Because the Arbitrator did not exceed his authority in rendering the Opinion and Award herein; the Award was not the product of fraud, partiality or malfeasance, or a mistake flowing therefrom; and the Arbitrator did not manifestly disregard applicable law in issuing his Opinion and Award, there is no basis for vacating the Award which represents the result of the parties' bargained-for dispute resolution mechanism as set forth in the CBA. As there is no justification to vacate the Opinion and Award, the relief sought by the Union must be denied, and its Amended Complaint dismissed with prejudice. Accordingly, it is hereby

ORDERED that Plaintiff's Amended Complaint is DISMISSED with prejudice.

September 19, 2018


DOUGLAS A. BRADY, Judge

ATTEST: ESTRELLA GEORGE
Clerk of the Court

By: 
Court Clerk Supervisor
9/20/18