

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NIPPON PAPER INDUSTRIES USA CO.,
LTD.,

Plaintiff,

v.

ASSOCIATION OF WESTERN PULP AND
PAPER WORKERS, LOCAL 155,

Defendant.

No. 3:11-cv-05500-RBL

ORDER GRANTING DEFENDANT'S
MOTION FOR JUDGMENT ON THE
PLEADINGS [Dkt. #11] AND DENYING
PLAINTIFF'S CROSS-MOTION FOR
SUMMARY JUDGMENT [Dkt. #13]

THIS MATTER comes before the Court on Defendant Association of Western Pulp and Paper Workers, Local 155's ("Union") Motion for Judgment on the Pleadings [Dkt. #11] and Plaintiff Nippon Paper Industries USA Company's ("Nippon") Cross-Motion for Summary Judgment [Dkt. #12]. The dispute arises from an arbitration award in which the Arbitrator concluded Nippon improperly discharged a Union employee in violation of the parties' collective bargaining agreement. Nippon filed this action under the Labor Management Relations Act, 29 U.S.C. § 185(a), to vacate the award and remand the case to the Arbitrator.

I. BACKGROUND

Nippon and the Union are parties to a collective bargaining agreement effective from June 1, 2005, until May 31, 2011. Pl.'s Opp'n at 2 [Dkt. #12]. Robert Fuller, a Union member, has worked in Nippon's Port Angeles paper mill for nearly thirty years as a pipefitter, a multi-craft mechanic, and a relief lead mechanic. *Id.* at 3. On September 25, 2009, Mr. Fuller's supervisors asked him to assist with a "lockout" on one of the plant's piping systems, a safety procedure conducted to verify that specific valves are properly secured. *Id.* at 4. Mr. Fuller

1 oversaw the procedure and completed a verification form by initialing five separate boxes to
2 indicate each valve had been secured. *Id.* at 5.

3 The lockout subsequently failed. *Id.* In the ensuing safety investigation, Mr. Fuller
4 acknowledged that he did not personally inspect each valve despite having signed and initialed
5 the lockout checklist. *Id.* On December 19, 2009, Nippon discharged Mr. Fuller. Compl. at 2
6 [Dkt. #1]. Pursuant to the collective bargaining agreement, the Union contested the termination,
7 alleging that Nippon violated Section 16.2 of the agreement by discharging Mr. Fuller without
8 just cause. Def.'s Mot. for J. on the Pleadings at 2 [Dkt. #11].

9 Section 16.2 of the collective bargaining agreement states, in relevant part, "the
10 [e]mployer shall not discharge or discipline any employee except for just cause." Def.'s Answer,
11 Ex. A ("CBA") 16–17 [Dkt. #9]. The agreement further provides that before an employee may
12 be discharged, "the employee must be given one (1) prior written warning letter *except* in the
13 following instances: (a) Dishonesty . . . (f) Falsification of records or documents . . . [and] (k)
14 Purposeful neglect." CBA § 16.3 (emphasis added).

15 Unable to resolve whether Mr. Fuller could be terminated for just cause without prior
16 written warning, the parties moved the dispute to arbitration. The collective bargaining
17 agreement makes arbitration "final and binding upon both parties," but an arbitrator does not
18 have the authority "to modify, add to, alter or detract from the provisions" of the agreement.
19 CBA § 29.17. On February 2, 2011, the Arbitrator conducted a hearing in Port Angeles,
20 Washington, and allowed the parties to make opening statements, examine and cross-examine
21 sworn witnesses, introduce documents, and deliver argument. Def.'s Mot. for J. on the Pleadings
22 3 [Dkt. #11]. On April 26, 2011, the Arbitrator sustained the Union's grievance, concluding
23 Nippon violated the collective bargaining agreement by terminating Mr. Fuller without just
24 cause:

25 After careful review of all evidence and arguments presented by the Parties, the
26 Arbitrator has arrived at the conclusion that the Employer has failed to meet its
27 burden of proof in this case. The Arbitrator believes that the evidence does not
28 support a finding that the Grievant falsified a company document, was dishonest
or was purposely negligent in his duties.

Def.'s Answer, Ex. B ("Arbitrator's Op.") 27 [Dkt. #9]. The Arbitrator noted Nippon's safety
guidelines for the lockout procedure and concluded nothing in the record established how the
verification should be completed or what that term encompassed. *Id.* at 30–31. With respect to

1 dishonesty, the Arbitrator found Mr. Fuller made a “good faith” error, and while his responses to
2 Nippon’s questions were often “meandering” or difficult to understand, they were not dishonest.
3 *Id.* at 39–43. The Arbitrator directed Nippon to reinstate Mr. Fuller, make him whole for his
4 losses, and issue him a verbal warning. *Id.* at 44–45.

5 Nippon now seeks to vacate the Arbitrator’s decision on the ground that the Arbitrator
6 deprived Nippon of its collectively bargained rights by ignoring the plain language of the
7 collective bargaining agreement. Nippon limits its challenge to the dishonesty and falsification
8 of records provisions.

9 II. AUTHORITY

10 “After the pleadings are closed—but early enough not to delay trial—a party may move
11 for judgment on the pleadings.” Fed. R. Civ. P. 12(c). “A judgment on the pleadings is properly
12 granted when, taking all allegations in the pleading as true, the moving party is entitled to
13 judgment as a matter of law.” *McGann v. Ernst & Young*, 102 F.3d 390, 392 (9th Cir. 1996).

14 Summary judgment is appropriate when, viewing the facts in the light most favorable to
15 the nonmoving party, there is no genuine issue of material fact which would preclude summary
16 judgment as a matter of law. Fed. R. Civ. P. 56. Once the moving party has satisfied its burden,
17 it is entitled to summary judgment if the nonmoving party fails to present, by affidavits,
18 depositions, answers to interrogatories, or admissions on file, “specific facts showing that there is
19 a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

20 When reviewing the award of an arbitrator chosen by the parties to a collective
21 bargaining agreement, the court does not reweigh the merits of the underlying dispute. *See*
22 *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 596 (1960) (“The
23 refusal of courts to review the merits of an arbitration award is the proper approach to arbitration
24 under collective bargaining agreements.”). Nevertheless, an arbitrator’s award “is legitimate
25 only so long as it draws its essence from the collective bargaining agreement,” and the arbitrator
26 is barred from “dispens[ing] his own brand of industrial justice.” *Id.* at 597. An arbitration
27 award may also be vacated if it violates an “explicit, well defined, and dominant” public policy.
28 *E. Assoc. Coal Corp. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000).

Courts afford substantial deference to collectively bargained arbitration awards. *E.g.*,
Van Walters & Rogers, Inc. v. Int’l Brotherhood of Teamsters, 56 F.3d 1132, 1135 (9th Cir.
1995) (“[A court’s] review is limited to whether the arbitrator’s solution can be rationally

1 derived from some plausible theory of the general framework or intent of the framework.”)
2 (quoting *Desert Palace, Inc. v Local Joint Exec. Bd. of Las Vegas*, 679 F.2d 789, 793 (9th Cir.
3 1982)) (internal quotation marks omitted); *Stead Motors of Walnut Creek v. Auto. Machinists*
4 *Lodge No. 1173*, 886 F.2d 1200, 1204 (9th Cir. 1989) (“[W]e are bound—under all except the
5 most limited circumstances—to defer to the decision of [the arbitrator], even if we believe that
6 the decision finds the facts and states the law erroneously.”).

7 III. DISCUSSION

8 Nippon does not allege that the Arbitrator’s award violates a dominant public policy;
9 thus, the question is whether the award is sufficiently drawn from the essence of the collective
10 bargaining agreement and devoid of any personal appeal to dispense industrial justice. The
11 Court is satisfied that the award meets these requirements and accordingly defers to the judgment
12 of the Arbitrator.

13 Nippon contends the Arbitrator’s award does not comport with the essence of the
14 collective bargaining agreement because the Arbitrator modified, added to, altered, or detracted
15 from the agreement’s provisions in violation of Section 29.17.1. Specifically, Nippon argues the
16 Arbitrator ignored the company’s right to summarily terminate an employee that is dishonest or
17 falsifies company documents because the Arbitrator acknowledged that Mr. Fuller initialed the
18 lockout verification form but later told the company he never personally verified any of the
19 lockout valves.

20 The Arbitrator noted the relevant provisions of the collective bargaining agreement and
21 ultimately concluded Nippon failed to meet its burden. Arbitrator’s Op. 45 [Dkt. #9]. He did not
22 ignore Section 16.3; instead, he determined Mr. Fuller’s conduct did not constitute “dishonesty”
23 or “falsification of company documents.” *Id.* Nippon relies on *Virginia Mason Hosp. v. Wash.*
24 *State Nurses Ass’n*, 511 F.3d 908, 913 (9th Cir. 2007), to suggest vacation is warranted because
25 the Arbitrator ignored the plain language of the collective bargaining agreement. But *Virginia*
26 *Mason* makes clear that “even if [the court] were convinced that the arbitrator misread the
27 contract or erred in interpreting it, such a conviction would not be a permissible ground for
28 vacating the award.” *Id.* at 913–14.

The Court is not convinced the Arbitrator ignored the plain language of the dishonesty
and falsification of company records provisions. In fact, the Arbitrator supported his conclusions

1 in a forty-six page opinion. He reasoned Mr. Fuller had not falsified company records because
2 he did not understand—and was not adequately trained—about what the lockout verification
3 paperwork required of him. Arbitrator’s Op. 30–32 [Dkt. #9]. Furthermore, the Arbitrator
4 concluded Mr. Fuller’s refusal to answer questions following the incident did not represent a
5 willful attempt to conceal the truth because he had the right to consult a Union representative
6 prior to the investigation. *Id.* at 42.

7 As Nippon correctly points out, arbitration awards are not ironclad, and courts will vacate
8 arbitrators’ decisions that ignore the parties’ collective bargaining agreement. *See, e.g.,*
9 *Freightliner, LLC v. Teamsters Local 305*, 336 F. Supp. 2d 1118, 1122 (D. Or. 2004). In
10 *Freightliner*, an employer terminated an employee for reporting to work under the influence of
11 marijuana. *Id.* at 1120. An arbitrator sustained the employee’s grievance because the
12 employee’s positive drug test did not necessarily prove he was under the influence of the drug.
13 *Id.* at 1121. The court, however, vacated the arbitrator’s award because the collective bargaining
14 agreement expressly defined “under the influence” to include a positive drug screening and
15 specifically provided that a THC level at or above 30ng/ml constituted a positive test. *Id.* at
16 1123. In essence, the arbitrator in that case dispensed his own brand of industrial justice by
17 ignoring the unambiguous terms of the collective bargaining agreement and applying conflicting
18 external law. *Id.* at 1125.

19 In this case, however, the collective bargaining agreement does not define what
20 constitutes falsification of records and employee dishonesty, and the Arbitrator was left to decide
21 whether Mr. Fuller’s conduct triggered either of those two provisions. As long as the
22 Arbitrator’s award is “rationally derived from some plausible theory” of the collective bargaining
23 agreement, the award must stand. *Van Walters*, 56 F.3d at 1135. The Arbitrator determined an
24 action constitutes falsification “only if it [is] intentionally deceptive,” and Mr. Fuller did not
25 intentionally deceive the company because he did not know or did not fully understand what the
26 lockout verification paperwork required of him. Arbitrator’s Op. 30–31, 38 [Dkt. #9]. The
27 Arbitrator further concluded Mr. Fuller’s evasiveness during Nippon’s investigation did not
28 represent an intention to conceal the truth, and therefore he did not act dishonestly. *Id.* at 39–43.

Whether or not this Court agrees with the Arbitrator’s interpretation of the collective
bargaining agreement, the interpretation is at least plausible and rationally related to the terms of
the agreement. The Arbitrator did not impose his own brand of industrial justice by ignoring the

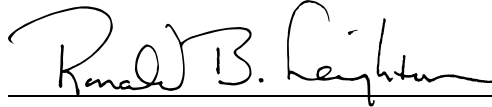
1 essence of the parties' collectively bargained rights. Therefore, the Arbitrator's award must be
2 enforced, and the Union is entitled to judgment on the pleadings. While no genuine issues of
3 material fact have been established in this case, Nippon has failed to prove it "is entitled to
4 judgment as a matter of law." Fed. R. Civ. P. 56(c).

4 **IV. CONCLUSION**

5 For the reasons stated above, the Defendant's Motion for Judgment on the Pleadings
6 [Dkt. #11] is GRANTED, and the Plaintiff's Cross-Motion for Summary Judgment [Dkt. #13] is
7 DENIED.

9 **IT IS SO ORDERED.**

10 DATED this 6th day of February, 2012.

11 

12 RONALD B. LEIGHTON
13 UNITED STATES DISTRICT JUDGE