

**Matter of Social Serv. Empls. Union, Local 371 v City
of New York**

2012 NY Slip Op 32485(U)

September 25, 2012

Supreme Court, New York County

Docket Number: 111219/11

Judge: Peter H. Moulton

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. PETER H. MOULTON
Justice

PART 40B

Index Number : 111219/2011
SOCIAL SERVICE EMPLOYEES UNION
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
CONFIRM AWARD

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause -- Affidavits -- Exhibits _____ | No(s). _____

Answering Affidavits -- Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *permitted*
decided in accordance with
precedent decision

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 9/25/12

[Signature], J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

HON. PETER H. MOULTON
SUPREME COURT JUSTICE

Supreme Court: New York County
Part 40B

-----X

In the Matter of the Arbitration of
Certain Controversies Between

SOCIAL SERVICE EMPLOYEES UNION,
LOCAL 371 on behalf of its member
BOWANA ROBINSON,

Petitioner,

-against-

Index No. 111219/11

CITY OF NEW YORK, DEPARTMENT OF
JUVENILE JUSTICE, ADMINISTRATION FOR
CHILDREN'S SERVICES,

Respondents.

-----X

Peter H. Moulton, Justice

Petitioner in this Article 75 proceeding seeks to confirm the arbitration award dated September 12, 2011, which determined the grievance brought by its member Bowana Robinson ("Robinson"). Respondents cross-move to vacate the arbitration award.

BACKGROUND

Robinson was employed as an Institutional Aide by the City's Department of Juvenile Justice from 1988 until his termination on or about April 25, 2005. Among his other tasks, Robinson was responsible for inventorying personal property of individuals detained at the Department of Juvenile Justice facility where

Robinson worked.

Robinson's termination arose from an investigation by respondents which revealed that Robinson had overdrawn funds from the Municipal Credit Union ("MCU") and that he had allegedly submitted falsified records to the New York City Housing Authority. Robinson submitted guilty pleas to lesser criminal charges arising from both transactions. With respect to the MCU transaction, Robinson pled guilty to petit larceny and agreed to pay restitution. With respect to the NYCHA records, Robinson pled guilty to disorderly conduct and agreed to repay \$21,000 to NYCHA.

Robinson challenged his termination pursuant to the parties' collective bargaining agreement.

On September 12, 2008, Arbitrator Randi Lowitt ("Lowitt") issued an award reinstating Robinson and granting him back pay and seniority as if he had never been terminated. In the decision, Lowitt found extenuating circumstances that cast Robinson's acts in a less damaging light. With respect to the withdrawals from the MCU, Lowitt noted that Robinson's testimony was that he thought that he had been approved for a loan from the MCU, and Lowitt found that the City's evidence was insufficient to sustain the charge. With respect to the alleged fraud on NYCHA, Lowitt found that other occupants of the apartment in question may have submitted the false documents and that respondents did not sustain their burden to show that Robinson was responsible for the documents' submission.

Petitioner brought an Article 75 petition to confirm the September 12, 2008 award. Respondents cross-moved to vacate the award.

On or about May 15, 2009, Justice Schlesinger issued a decision and order confirming the award. Respondents appealed Justice Schlesinger's decision.

In a decision dated March 29, 2011, the First Department reversed Justice Schlesinger's decision and remanded the matter to the arbitrator. In its decision the First Department stated:

The arbitrator's failure to give preclusive effect to Robinson's guilty plea of petit larceny was irrational [Cites omitted.] The arbitrator's award place Robinson back into a position where he has the responsibility to voucher property of individuals being brought into a juvenile facility. [Cites omitted.]

(Social Services Employees Union, Local 371 v City of New York, 82 AD3d 644, 645.)

The parties again appeared before Arbitrator Lowitt. On September 12, 2011, Lowitt issued the award that is challenged herein. Lowitt held as in the earlier award that Robinson should be reinstated to his previous civil service position, with back pay restored and seniority and pension benefits set as if he had never been terminated. The one change from Lowitt's prior decision was that the arbitrator held that Robinson's restoration to "any eligible position" should not include any position "in which Mr. Robinson would have the responsibility to voucher property of

individuals being brought into a juvenile facility."

Petitioner now seeks an order confirming this award. Respondents seek an order vacating the award and dismissing the petition.

DISCUSSION

The Court of Appeals has held that:

Courts are bound by an arbitrator's factual findings, interpretation of the contract and judgment concerning remedies. A court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one. Indeed, even in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice.

(New York State Correctional Officers and Police Benevolent Association Inc. v State of New York, 94 NY2d 321, 326.) A court may vacate an arbitrator's award only when it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on an arbitrator's power under CPLR 7511(b)(1). (Id.)

An arbitrator is not compelled to uphold an employee's termination upon a criminal conviction, and may instead impose a lesser penalty. (See City School Dist. of New York v Lorber, 50 AD3d 301.) In the instant proceeding, the First Department remanded the matter to the arbitrator. It did not reverse and find

Robinson automatically disqualified under New York City Charter § 1116. That section would not apply to the MCU offense, as the MCU is not the City of New York. Assuming that NYCHA is a City Agency that would fall under Charter § 1116, Robinson's plea was simply to disorderly conduct and does not establish that he was the person who submitted the fraudulent reports. (E.g. Johnson v New York City Dep't of Environmental Protection, 10 NY3d 41, 45.) As noted above, Lowitt found that respondents had not established that fact.

The arbitrator addressed the First Department's stated concern that Robinson not be entrusted with the personal property of others by providing that he not be allowed to voucher property. It was not irrational or a violation of any public policy clearly embodied in decisional or statutory law for the arbitrator to find that Robinson could continue with his janitorial tasks. That the court might have reached a different conclusion provides no basis for overturning the arbitral award. (The City School Dist. of the City of New York v McGraham, 17 NY3d 917.)

Accordingly, it is ORDERED AND ADJUDGED that the September 12, 2011 arbitration award is confirmed. This constitutes the decision and judgment of the court.

Date: September 25, 2012



AJSC

HON. PETER H. MOULTON
SUPREME COURT JUSTICE