

**Matter of Christ the King Regional High School v
Lay Faculty Assoc., Local 1261-LIUNA**

2013 NY Slip Op 32165(U)

July 26, 2013

Supreme Court, Queens County

Docket Number: 4987/13

Judge: Augustus Agate

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

MEMORANDUM

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

-----x

In the Matter of the Arbitration
between CHRIST THE KING REGIONAL
HIGH SCHOOL,

Index No: 4987/13

Petitioner,

Motion

-and-

Dated: April 22, 2013

LAY FACULTY ASSOCIATION, LOCAL
1261-LIUNA,

M# 1

Respondent.

-----x

This is an application by the petitioner to modify and/or vacate an arbitration award pursuant to CPLR 7511.

This proceeding arises out of the discharge of Donald Errico, a tenured teacher at petitioner Christ the King Regional High School, on January 20, 2012. Petitioner, by letter from its President Michael Michel, notified Mr. Errico that he was being discharged for just cause pursuant to Article XXXI of the Collective Bargaining Agreement because he had engaged in "grossly inappropriate communication with a student."

Specifically, it is alleged that Mr. Errico stated to a student in the classroom that "I want you to go home and put a pillow over your face and wait for God to call you." Mr. Michel noted that this misconduct was consistent with a "similar pattern" of behavior by Mr. Errico towards the students.

Mr. Errico subsequently applied for unemployment benefits. The Department of Labor disqualified Mr. Errico from receiving benefits on the ground that he lost his employment through misconduct in connection with that employment. This determination was upheld by an Administrative Law Judge on May 7, 2012. The decision of the Administrative Law Judge was affirmed on January 2, 2013 by the Unemployment Insurance Appeal Board.

Thereafter, pursuant to Article XXXII of the Collective Bargaining Agreement, on January 17, 2013, an arbitration proceeding was held between Christ the King Regional High School and Lay Faculty Association, Local 1261-LIUNA, on behalf of Mr. Errico. The parties agreed that the arbitrator would hear and determine whether there was just cause for the discharge of Mr. Errico and if not, what shall be the remedy. Prior to the start of the proceeding, petitioner sought to stay the arbitration on the ground of collateral estoppel based upon the prior decisions of the Unemployment Insurance Appeal Board. The arbitrator reserved decision on that issue and proceeded with the arbitration.

In an Opinion and Award dated January 28, 2013, the arbitrator found that it was proper to allow the arbitration to proceed notwithstanding the prior Unemployment Insurance Appeal Board decisions. The arbitrator sustained the grievance in part and denied the grievance in part. In her award, the arbitrator

sustained the grievance to the extent that the employer was directed to pay Mr. Errico the sum of \$30,000.00.

In support of the instant application to vacate and/or modify the arbitration award, petitioner asserts that the arbitrator exceeded her power by failing to give proper recognition to a prior administrative body ruling on the exact issue raised in the arbitration proceeding. According to petitioner, since the Unemployment Insurance Appeal Board found that Mr. Errico was guilty of misconduct in his employment, respondent was collaterally estopped from re-litigating that issue in the arbitration proceeding. Petitioner further contends that the arbitrator exceeded her power by awarding Mr. Errico \$30,000.00 while at the same time denying him reinstatement.

An arbitration award may be vacated on the application of a party who participated in the arbitration proceeding if that party's rights were prejudiced by (i) the corruption, fraud or misconduct in procuring the award; (ii) the partiality of a neutral arbitrator; (iii) the arbitrator exceeding his power so that a final or definite award was not made; or (iv) the arbitrator failing to follow the procedures set forth in CPLR Article 75. (CPLR 7511[b][1]; *Matter of Wieder v Schwartz*, 35 AD3d 752, 753 [2d Dept 2006].) In addition to the grounds listed in CPLR 7511(b), a court may vacate an arbitration award 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). (*Matter of TC Contr., Inc. v 72-02 Northern Blvd. Realty Corp.*, 39 AD3d 762, 763 [2d Dept 2007]; *Matter of Henneberry v ING Capital Advisors, LLC*, 37 AD3d 353, 353 [1st Dept 2007].)

In order to invoke the doctrine of collateral estoppel, (i) the identical issue must have necessarily been decided in the prior action and be decisive of the present action and (ii) the party to be precluded from re-litigating the issue must have had a full and fair opportunity to contest the prior determination. (*Kaufman v Eli Lilly and Co.*, 65 NY2d 449, 455 [1985].) The party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues in the present litigation and the prior determination, whereas the party attempting to defeat the application of the doctrine of collateral estoppel bears the burden of demonstrating the absence of a full and fair opportunity to litigate the issue in the prior action. (*Kaufman v Eli Lilly and Co.*, 65 NY2d at 456; *Failla v Nationwide Ins. Co.*, 267 AD2d 860, 862 [3d Dept 1999].)

The Court of Appeals has applied the doctrine of collateral estoppel in proceedings involving arbitration and the Unemployment Insurance Appeal Board. (*Matter of Ranni*, 58 NY2d 715 [1982].) In *Ranni*, an arbitrator found that employee was guilty of insubordination and approved the penalty of discharge.

The employee's claim for unemployment benefits was denied because he was found to have been discharged for misconduct. The Administrative Law Judge at the Unemployment Insurance Appeal Board confirmed the decision to deny the benefits stating that he was bound by the arbitrator's factual findings. The Court of Appeals applied the doctrine of collateral estoppel and found that the employee's commission of the underlying acts had been decided in the prior arbitration proceeding. Thus, the Court of Appeals found that the employee was precluded from re-litigating this issue in a different forum.

Applying these principles to the case at bar, the court finds that the issue before the arbitrator, whether there was just cause to discharge Mr. Errico, was the identical issue decided in the initial Department of Labor hearing and subsequent decisions of the Unemployment Insurance Appeal Board. Indeed, the Appeal Board Administrative Law Judge found that there was credible evidence that Mr. Errico was terminated because his actions rose to the level of misconduct. In addition, petitioner clearly had a full and fair opportunity to contest the issue of whether Mr. Errico engaged in misconduct during the initial Department of Labor hearing and the Appeal Board hearings. The Administrative Law Judge noted that there were appearances by and on behalf of the claimant and his employer. Thus, the arbitrator erred by proceeding with the arbitration hearing and not giving

collateral estoppel effect to the findings of the Department of Labor and the Unemployment Insurance Appeal Board. (*Matter of Chohan*, ___ AD3d ___, 2013 NY Slip Op 05280 [3d Dept 2013]; *Matter of Redd (Commissioner of Labor)*, 98 AD3d 791, 791 [3d Dept 2012].)

By fashioning a remedy herein, the award of \$30,000.00, the arbitrator exceeded her authority since the signed submission agreement specifically stated that the arbitrator would only address the issue of remedy in the event she found that there was just cause for the discharge. The arbitrator did not reinstate Mr. Errico, thus finding that there was just cause for his discharge. Therefore, the issue of the remedy should not have been decided by the arbitrator.

Accordingly, this application by the petitioner is granted to the extent that the portion of the arbitration award which awarded the grievant the sum of \$30,000.00 is vacated.

Settle Judgment.

Date: July 26, 2013

AUGUSTUS C. AGATE, J.S.C.