

**Marine Engrs.' Beneficial Assn. v City of New York**

2017 NY Slip Op 32724(U)

December 15, 2017

Supreme Court, New York County

Docket Number: 651627/2017

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

MARINE ENGINEERS' BENEFICIAL ASSOCIATION et al.

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MOT. DATE

CITY OF NEW YORK et al.

MOT. SEQ. NO. 001

The following papers were read on this motion to/for confirm arbitration award and x-petition to vacate

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits NYSCEF DOC No(s).
Notice of Cross-Motion/Answering Affidavits — Exhibits NYSCEF DOC No(s).
Replying Affidavits NYSCEF DOC No(s).

This is an Article 75 proceeding seeking to confirm an arbitration award dated March 1, 2017 (the "award") by Arbitration E. David Hyland (the "arbitrator") which granted petitioner Timothy Wood the right to bid on his old job of Chief Marine Engineer and also awarded back pay for loss of overtime. Respondents have filed a cross-petition seeking to vacate the same award on the basis that it violates public policy. For the reasons that follow, the petition is granted and the cross-petition is denied.

Pursuant to CPLR § 7510, "[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511." CPLR § 7511 (b) sets forth the following grounds for vacating an arbitration award when the parties participated in the arbitration:

- (i) corruption, fraud or misconduct in procuring the award; or
(ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or
(iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or
(iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

An arbitrator can be seen to have exceeded his power if the award he or she has rendered violates a strong public policy (see i.e. Kowaleski v. New York State Dep't of Correctional Services, 16 NY3d 85

Dated: 12/15/17

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [X] GRANTED [ ] DENIED [ ] GRANTED IN PART [ ] OTHER
3. Check if appropriate: [ ] SETTLE ORDER [ ] SUBMIT ORDER [ ] DO NOT POST
[ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

[2010)].

[2010]).

The underlying facts are as follows. Wood, who was employed by the City of New York (the "City") in the title of Chief Marine Engineer ("CME") aboard the Staten Island Ferries, was working aboard the Staten Island Ferryboat John F. Kennedy on September 22, 2015. During his shift, he was observed sleeping while on duty through video on the boat. At the time, Wood was the only person present in the Control Room during docking in violation of docking procedures, which requires two "below decks" personnel to be at the console. Immediately after the boat docked, Wood was removed from duty.

Although no formal disciplinary charges were filed, according to the award, on October 5, 2015, Wood entered into a settlement agreement with the City. According to the settlement agreement, Wood admitted that he had been sleeping on duty and agreed to a 30-day suspension without pay. The settlement agreement provides that "[t]his document is executed in consideration of the Department's resolution of the aforementioned charge without the furtherance of disciplinary action in this matter."

Upon returning to work on November 4, 2015, Wood was told he would no longer be permitted to work in his recently bid job and, instead, would be assigned non-passenger service dock work or work on out-of-service vessels. He was thereafter prohibited from bidding for jobs in his Civil Service tile, but instead was permitted to bid on a Marine Engineer ("ME") job, effective May 1, 2016. A memorandum from Captain James DeSimone, Chief Operating Officer of the New York City Department of Transportation's ("DOT") Ferries Division, to DOT labor relations, indicated that Wood was not permitted to bid for a CME job because he was observed failing to perform his duties. Wood was further limited in overtime opportunities.

Wood followed internal grievance procedures and ultimately his union, the Marine Engineers' Beneficial Association ("MEBA"), requested arbitration of the grievance. The arbitrator held hearings in December 2016. MEBA and the DOT stipulated that the issue to be decided at arbitration was:

Whether the [DOT] violated Article XV, Section 6 of the parties' 2008-10 Ferryboat Titles (Licensed) collective bargaining agreement by not allowing [Woods] to return to his previously bid position after his suspension and not allowing him to subsequently bid as a Chief Marine Engineer. If so, what should be the remedy?

Article XV, Section 6 of the collective bargaining agreement provides as follows:

Section 6 – Job Bidding

Per annum Licensed Officers shall have the right to bid for jobs on the basis of seniority. Such bid will be permanent for one year.

Changes may be made before the expiration of the year by mutual consent of the Licensed Officers, subject to prior approval by the Employer. Such approval shall not be unreasonably withheld.

The arbitrator found that the restrictions placed on Wood after he returned to work were "directly related to the same misconduct/incompetence alleged as part of the parties' disciplinary settlement". The arbitrator concluded that the post-settlement actions taken against Wood violated his contractual rights under Article XV, Section 6 in the following ways: [1] Wood's right to work his bid job; [2] Wood's right to work overtime available to all others in his Civil Service classification; and [3] his right to bid for a CME job in the Spring of 2016. As for the remedy, the arbitrator found that Wood was entitled to 339.15 hours' overtime pay at his CME rate.

Petitioners now seek an order confirming the award. Respondents argue that the award violates public policy, citing the 2003 Staten Island Ferry crash in which eleven people were killed and many were injured. Respondents contend that Wood's falling asleep while on duty and violation of the rule re-

quiring two people at the console when docking, which was enforced after the 2003 crash, threatens public safety. Respondents point to the Seaman's Manslaughter Statute, 18 USC § 1115, which criminalizes misconduct or negligent resulting in the deaths involving vessels on US waters. They argue that the award opens DeSimone up to criminal liability under the Seaman's Manslaughter Statute. Further, without offering any specific detail, respondents claim that having Woods in the CME position has cost considerable expense and resources, in terms of monitoring his job performance.

In opposition to vacatur, petitioners maintain that the award recognizes strong public policies of enforcing settlement agreements and collective bargaining, generally. Otherwise petitioners contend the award does not violate public policy. Petitioners claim that DeSimone is not subject to liability since he has not willfully and knowingly allowed a seaman to sleep on watch.

## Discussion

The scope of the public policy exception to an arbitrator's power to resolve the issues before him or her is "extremely narrow" (*United Federation of Teachers, Local 2, AFT, AFL-CIO v. Board of Educ. Of City School Dist. Of City of New York*, 1 NY3d 72, 80 [2003]). Further, "[j]udicial restraint under the public policy exception is particularly appropriate in arbitrations pursuant to public employment collective bargaining agreements" (id quoting *Matter of New York City Tr. Auth. v. Transport Workers Union of Am., Local 100, AFL-CIO*, 99 NY2d 1 [2002]).

Determining whether an award violates public policy involves a two-part test: [1] if the court can determine that a law prohibits the matter decided by arbitration and the court does not need to engage in extensive fact finding or legal analysis, the award should be vacated; and [2] the award should be vacated if it "violates a well-defined constitutional, statutory or common law of this State" (*United Federation of Teachers, supra* [internal quotations omitted]).

The Seaman's Manslaughter Statute, 18 USC § 1115, is entitled "Misconduct or neglect of ship officers", and provides as follows:

Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

When the owner or charterer of any steamboat or vessel is a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

On this record, the court cannot find that the award violates public policy. In order to find for respondents, the court would need to engage in an exhaustive analysis and/or goal-oriented approach which the Court of Appeals warned against in *Matter of New York City Tr. Auth., supra* at 8 ("[T]he narrowness of the public policy exception, as applied to the Arbitration process under collective bargaining agreements, is designed to ensure that courts will not intervene in this stage of the collective bargaining process in pursuit of their own policy view, or because they simply disagree with the arbitrator's weighing of the policy consideration"). Here, the arbitrator's decision on the framed issues the parties' stipulated to put before him was rational and otherwise within his powers to determine.

The court does not find that the award, by its own terms, violates the Seaman's Manslaughter Statute, since it does not direct respondents to engage in misconduct or negligence, nor does it require DeSimone or any other DOT employee to "knowingly and willfully" cause "fraud, neglect, connivance, misconduct, or violation of law." The award merely finds that respondents violated the collective bargaining agreement by imposing additional punishment after the settlement agreement had been entered into.

Indeed, the court is mindful of the concerns raised by respondents regarding public safety. However, this argument was vitiated by a number of undisputed facts on this record. First, respondents initially did not find Wood's actions to warrant the punishment they now seek to impose, insofar as the settlement agreement only provided for a 30-day suspension and forfeiture of pay. Further, respondents have already restored Wood to CME on the day shift. Respondents have not articulated any act by Wood's since the underlying incident from which the court could conclude that his employment as a CME imposes a real risk to public safety.

Otherwise, respondents have failed to substantiate their claims of risk to public safety. The court persuaded by respondents' claim that "[i]n order to ensure that the safety of the traveling public while Wood is on duty, DOT has resorted to monitoring Wood's performance through the ferryboats' video system, resulting in significant additional staffing and expense to the DOT". First, respondents have not providing any detail about this purported burden. Further, the court does not find that monitoring a CME's performance through a video system is implicitly burdensome. Indeed, respondents' argument on this record is nothing more than rank speculation, insofar as accidents do happen and the risk of another disaster like the 2003 Staten Island Ferry crash may indeed justify such monitoring of all CMEs.

Therefore, the court finds that the arbitrator's award must be confirmed.

## CONCLUSION

In accordance herewith, it is hereby

**ORDERED** that the motion is granted and the arbitration award dated March 1, 2017 by Arbitration E. David Hyland which granted petitioner Timothy Wood the right to bid on his old job of Chief Marine Engineer and also awarded back pay for loss of overtime is hereby confirmed in its entirety; and it is further

**ORDERED** that the cross-motion to vacate the award is denied in its entirety.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated:

12/15/17  
New York, New York

So Ordered:

  
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Hon. Lynn R. Kotler, J.S.C.