Bridge & Tunnel Officers Benevolent Assn. v Triborough Bridge & Tunnel Auth.
2021 NY Slip Op 31901(U)
June 2, 2021
Supreme Court, New York County
Docket Number: 657078/2020
Judge: Carol R. Edmead
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD **PART** IAS MOTION 35EFM

Justice

----------X

BRIDGE AND TUNNEL OFFICERS BENEVOLENT ASSOCIATION

Plaintiff,

- v -

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Defendant.

----------X

INDEX NO. 657078/2020

MOTION DATE 12/17/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 9, 10, 11, 12 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, it is hereby

ORDERED that the petition of Petitioner Bridge and Tunnel Officers Benevolent Association (Motion Seq. 001) for the confirmation of the Award is denied and this proceeding is dismissed; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that counsel for Respondent shall serve a copy of this order, along with notice of entry, on all parties within 20 days of entry.

MEMORANDUM DECISION

In this Article 75 action, Petitioner Bridge and Tunnel Officers Benevolent Association (the "Union") seeks an order confirming the "Interim Opinion and Award" dated February 11, 2020 (the "Interim Award) issued in its favor. Respondent opposes and seeks an order denying the petition in its entirety. For the reasons set forth below, this Court denies the instant petition and dismisses this proceeding.

BACKGROUND FACTS

The Union is the collective bargaining representative of the Bridge and Tunnel Officers ("BTOs") employed by Respondent. The Union and Respondent are parties to a Collective Bargaining Agreement ("CBA") containing a broad grievance and arbitration procedure (NYSCEF doc No. 4, Article X, Section 3).

The Union alleges that the CBA and the practices between the parties establish procedures for scheduling and assigning BTO work and for bidding on assignments contained in the schedules (NYSCEF doc No. 1, ¶ 9).

In 2015, the Union and Respondent had a dispute over Respondent's proposed 2015 schedules. The parties settled the dispute by entering into a "Stipulation of Settlement" dated February 24, 2016 (the "Stipulation"; NYSCEF doc No. 3). As relevant here, the Stipulation provides a dispute resolution mechanism to resolve disputes over what they call "Plaza, Patrol, Toll" ("PPT") type schedules (NYSCEF doc No. 3, Section 3).

The Stipulation of 2016 applies to the dispute herein which arose in 2017 concerning the May and August 2017 schedules (the "2017 Schedules"). The Union initiated an arbitration alleging that the 2017 Schedules, which constituted PPT-type schedules within the meaning of the Stipulation, violated the CBA.

After holding hearings from 2017 to 2018, Arbitrator Robert L. Douglas (the "Arbitrator") issued the Interim Award, resolving what he considered as the "first and threshold" issue, *i.e.*, whether the 2017 Schedules are PPT-type schedules within the contemplation of the Stipulation (NYSCEF doc No. 2, pp. 20-30). In addressing this issue, the Arbitrator interpreted the language of the Stipulation and, thereafter, found that the 2017 Schedules are PPT-type schedules within the meaning of the Stipulation (*Id.*, p. 30).

The Arbitrator, however, reserved the issue of whether the 2017 Schedules violated the CBA for later disposition. The Arbitrator held that "[a]lthough the Union alleged in its post-hearing brief and reply brief that [Respondent's] actions had violated the [CBA], [Respondent] decided not to address the alleged violations of the [CBA] and, instead, claimed that the [Stipulation] envisioned that the contractual violation allegations would be addressed thereafter only if the Union had proved the existence of a "Plaza, Patrol, Tolls" type schedule." The Arbitrator further held that "[i]n an abundance of caution and to safeguard the rights of [Respondent], the parties will be afforded an opportunity to fully and amply address the alleged contractual violations after receipt of the [Interim Award]." (*Id.*, p. 31)

In view of communications received by the Arbitrator concerning how to proceed with the issue of whether the 2017 Schedules violated the CBA, he issued a "Further Interim Ruling" on April 21, 2020. In said ruling, the Arbitrator clarified that "the parties will be provided with an opportunity to develop the record about any violation or violations of the [CBA] that may have occurred in connection with the pending matters" and that "opportunity will include the right of both parties to present testimony, documentary evidence, and argument in furtherance of their respective positions." The Arbitrator continued that "[i]f necessary, a subsequent proceeding will be held to determine the scope of the Arbitrator's jurisdiction to provide a remedy that may include

damages and/or other remedies. If the Arbitrator has such jurisdiction, the parties also will have an opportunity to address the proper remedy or remedies."

On December 16, 2020, Petitioner filed the instant petition to confirm the Interim Award pursuant to Article 75. Respondent opposes on the ground that the Interim Award is "not a final award" and "did not decide any issues with finality as [it] specifically afforded the parties a further opportunity to address the allegations of the Union that [Respondent had violated the [CBA]." (NYSCEF doc No. 10, ¶¶ 4-5). In Reply, Petitioner maintains that the Interim Award is a final award as it disposes of a separate and independent claim, that is, whether the 2017 Schedules constituted PPT-type schedules (NYSCEF doc No. 12, p. 2). According to Petitioner, the subsequent hearings are intended to determine the separate issue of whether the 2017 Schedules violated the CBA (*Id.*, p. 3)

DISCUSSION

CPLR 7510 provides that the "court shall confirm an award upon application of a party made within one year after its delivery to [it], unless the award is vacated or modified upon a ground specified in section 7511."

However, it is settled that "before the court may intervene or even entertain a suit seeking court intervention, there must be an 'award' within the meaning of the statute." (*Mobil Oil Indonesia v Asamera Oil*, 43 NY2d 276 [1977]). "The "awards" of arbitrators which are subject to judicial examination under the statute -- and then only to a very limited extent -- are the final determinations made at the conclusion of the arbitration proceedings. Generally, the award is the arbitrators' decision and final determination upon the matters and must be coextensive with the submission" (*Id.*, citations omitted).

The crux of contention here is whether the Interim Award constitutes a final award that can be confirmed pursuant to CPLR 7510. Respondent argues that it is not final as it "did not decide all the issues in this arbitration proceeding" and "specifically afforded the parties a further opportunity to address the allegations of the Union that [Respondent] had violated the [CBA]." Unfortunately, Respondent cites to no case law at all to support its position.

Petitioner has an opposing view. According to Petitioner, the Interim Award is final as it disposes of a discrete issue, *i.e.*, whether or not the 2017 Schedules constituted PPT-type schedules within the meaning of the Stipulation. Petitioner contends that "[s]tate courts [] like their federal counterparts, deem an award final when it disposes of a separate and independent claim, even when it does not dispose of all the claims submitted to arbitration." In support, Petitioner cites to the cases of *Wendt v. BondFactor Co., LLC* (169 A.D.3d 808 [2d Dept 2019]) and *Cotugno v. Bartkowski*, 37 Misc. 3d 1206(A) [Sup. Ct., Suffolk County 2012]).

This Court finds that the Interim Award is not a final award subject to confirmation under CPLR 75. In arriving at this conclusion, this Court heeds relevant pronouncements made by the Court of Appeals in the recent case of *American Intl. Specialty Lines Ins. Co. v Allied Capital Corp.* (35 NY3d 64 [2020]).

In *American Intl.,* the arbitral panel issued an initial determination – denominated as a "Partial Final Award" – that addressed some, but not all, of the issues submitted for arbitration. Upon reconsideration, the arbitration panel issued a "Corrected Partial Final Award". This prompted petitioner to commence a proceeding seeking vacatur of the "Corrected Partial Final Award" on the ground that the doctrine of functus officio precluded the arbitration panel from reconsidering the "Partial Final Award". The Supreme Court denied the petition, but the First Department reversed, holding that "during the arbitration proceedings, the parties agreed to an

immediate determination solely as to liability, which they expected would be final" and "nothing in the record . . . suggest[ed] that the parties or the panel believed that the [Partial Final Award] would be anything less than a final determination." The First Department, therefore, concluded that "under the functus officio doctrine, it [was] improper and in excess of the panel's authority" to reconsider the Partial Final Award."

Upon appeal, the Court of Appeals reversed the First Department. The Court of Appeals held that the doctrine of "functus officio would apply only to final awards" but in that case, despite its name, the "Partial Final Award" was not, in fact, final.

In support of its conclusion, the Court of Appeals held that: (i) under the New York State case law, "a final arbitration award is generally one that resolves the entire arbitration"; and (ii) federal cases which treated partial determinations as final awards involved cases where parties expressly agreed that certain issues be decided in separate partial awards and that such awards will be considered to be final.

In *American Intl.,* the Court of Appeals found that the "Partial Final Award" was not a final award as neither the parties nor the arbitrators ever discussed or otherwise demonstrated any mutual understanding whether the proposed severance of some of the issues in arbitration would result in a final award.

Applying the principles enunciated in *American Intl.,* this Court finds that the Interim Award does not constitute a final award subject to confirmation under CPLR 7510.

First, there is no dispute that the Interim Award does not resolve all the issues submitted by the Union and Respondent to arbitration. There remains the issue of whether the 2017 Schedules violated the CBA and the Arbitrator directed presentation of oral and documentary evidence to

resolve this issue. Therefore, the Interim Award does not conform to what the New York State case law describes as one that "resolves the entire arbitration."

Second, there is no showing that the Union and Respondent here expressly agreed that the Interim Award shall constitute a final award. While Petitioner alleges that Respondent actually insisted to bifurcate the proceeding so that an initial determination may be made first as to the nature of the 2017 Schedules, there is no evidence on the record that parties agreed that any resulting partial decision would be treated as a final award.

The cases cited to by Petitioner do not help its case. In *Wendt v. BondFactor Co., LLC* (169 A.D.3d 808 [2d Dept 2019]), the Second Department considered the subject partial award as final - even if there remained an outstanding issue with respect to attorney's fees - on the ground that the partial award itself stated that it was final with respect to the matters addressed therein. There is no similar language contained in the Interim Award.

As to the case of *Cotugno v. Bartkowski*, 37 Misc. 3d 1206(A) [Sup. Ct., Suffolk County 2012]), the *Cotugno* court cites to federal cases as basis to its holding that "[a]n award is deemed final, and may be confirmed, when it finally and conclusively disposes of a separate and independent claim, although it does not dispose of all of the claims that were submitted to arbitration." Federal cases are merely persuasive and, as explained by the Court of Appeals in *American Intl.*, these cases contemplate situations where parties specifically agreed to bifurcate the arbitration for the purpose of obtaining a "decision that was expressly intended to have immediate collateral effects in a judicial proceeding."

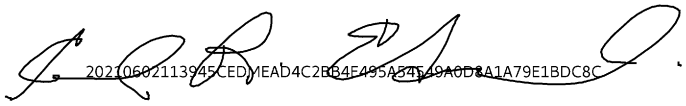
CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the petition of Petitioner Bridge and Tunnel Officers Benevolent Association (Motion Seq. 001) for the confirmation of the Award is denied and this proceeding is dismissed; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that counsel for Respondent shall serve a copy of this order, along with notice of entry, on all parties within 20 days of entry.



6/2/2021
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:	x	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	x	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE