

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: February 20, 2017]

TOWN OF JOHNSTON

v.

INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS, LOCAL 307, by and
through its President, JAMES BRADY

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C.A. No. PM-2016-3463

DECISION

LICHT, J. Before the Court are the Town of Johnston’s (Johnston) Motions to Stay Implementation of and to Vacate an Arbitration Award and the International Brotherhood of Police Officers, Local 307’s (IBOP) Cross-Motion to confirm the same award. Jurisdiction is pursuant to G.L. 1956 § 28-9-14.

I

Facts and Travel

The award concerns a disciplinary action taken against a Johnston police officer. Award 4. The arbitrator, AAA Arbitrator Beth Anne Wolfson, Esq. (Arbitrator), found the following facts. Id.; Def.’s Ex. E.

The Arbitrator derived jurisdiction and based her award on a collective bargaining agreement (CBA) that governs the parties’ relationship from July 1, 2014 to June 30, 2017. Id.; Miscellaneous Pet. ¶ 2; Award 4.

On the morning of July 1, 2015, Patrolman Adam Catamero (Officer Catamero) was working an overtime shift for the Johnston Accident Reduction Enforcement (JARE) program,

designed to enforce traffic laws in the Town of Johnston. Award 4-5. During this overtime shift, Officer Catamero witnessed Ronald Fraraccio (Fraraccio) speeding in a gray Honda at 53 MPH in a 35 MPH speed limit zone. Award 5. Fraraccio owns R & F Auto; at the time of the infraction, he was test driving a customer's vehicle. Id. Officer Catamero, driving an unmarked police vehicle, attempted to perform a motor vehicle stop. Id. He was only able to pull Fraraccio over when he pulled into the parking lot of R & F Auto. Id.

When Fraraccio pulled into R & F Auto, he exited his car. Id. at 6. Officer Catamero asked Fraraccio to return to the vehicle. Id. When Fraraccio did so, Officer Catamero began to inquire about the circumstances of Fraraccio's infractions. Id. Officer Catamero informed Fraraccio that he had pulled him over for speeding and driving with tinted windows, a civil offense in Johnston. Id. Officer Catamero asked for Fraraccio's license and registration. Id. Fraraccio, who does not carry his license while working, did not have it. Id. However, Fraraccio did provide the registration of the vehicle. Id.

During the vehicle stop, Lisa Roberti (Roberti), R & F Auto's Office Manager, came outside to determine what was happening in the parking lot. Id. She asked to speak with Fraraccio, but Officer Catamero told her to "go back inside." Id. at 6-7. Roberti did not. Id. Officer Catamero ordered her back inside twice more, and both times Roberti ignored his orders. Id. Finally, Officer Catamero told her to "get back inside, or I'll make it worse for him." Id. at 7. Roberti returned to the office telling Officer Catamero that he was "not being very nice." Id.

Another witness, Luigi Bottella (Botella), a customer of R & F Auto, testified that he heard the entire exchange among Roberti, Fraraccio, and Officer Catamero. Id. He did not hear Roberti do anything to interfere with Officer Catamero's investigation. Id. Bottella also testified, that "the officer's voice was firm." Id. at 7. The Arbitrator notes in her decision that

the witness “did not testify that Grievant was rude or threatening.” Id. After Roberti went inside, Officer Catamero did not write a ticket for Fraraccio, but, instead, issued a warning. Id. at 8.

Roberti filed a complaint against Officer Catamero that same day. Id. Chief Richard Tamburini (Chief Tamburini) assigned Major Joseph Razza (Major Razza) to investigate the complaint. Id. at 8-9. Major Razza conducted an investigation by interviewing Roberti, Fraraccio, and Bottella and reported the results of the investigation to Chief Tamburini. Id. at 9. Major Razza recommended a two day suspension. Id. at 9. On July 29, 2015, Chief Tamburini found that Officer Catamero had violated three sections of the Johnston Police Department Rules and Regulations, “Civility,” “Conduct Unbecoming an Officer,” and “Discourtesy.” Id. at 10-11; 14-17. Chief Tamburini issued a “Summary Punishment” memorandum stating, “I am suspending you for (2) days without compensation due to your actions on the date in question.” Id.; Def. Ex. C. Officer Catamero filed a grievance regarding the suspension, but Chief Tamburini denied it on August 3, 2015. Def. Ex. D.

On August 10, 2015, IBPO, acting on behalf of Officer Catamero, filed a Demand for Arbitration with the American Arbitration Association (AAA). Id. at 10. The Arbitrator held three hearings on January 20, March 4, and April 7, 2016. Award 1.

On July 14, 2016, the Arbitrator issued a written decision in which she found that Officer Catamero had not violated any of the three Johnston Police Department Rules and Regulations for which Chief Tamburini disciplined Officer Catamero. Id. at 17. The Arbitrator found that no “just cause” existed for the suspension for several reasons. Id. at 13-17. She found Roberti’s complaint was disingenuous, writing “[i]nstead of complying as an ordinary citizen would do, Roberti kept trying to insert herself into the situation.” Id. at 14. The Arbitrator believed Roberti

was not a credible witness as she had failed to mention that her father was a police officer and that it was unreasonable for Roberti not to understand that Officer Catamero was conducting a traffic stop of Fraraccio. Id. at 14-15. The Arbitrator further decided:

“Given the record evidence, including that Roberti is the daughter of a current or former police officer and Fraraccio’s assessment that Roberti has an attitude, I conclude that Roberti saw her boss being stopped by a police officer and decided to use her connections to help him out.” Id. at 14.

The Arbitrator enunciated other reasons for her holdings that did not involve Roberti’s credibility. Id. at 13-17. She addressed each violation that Chief Tamburini found Officer Catamero committed. Id. at 15-16. The first violation Chief Tamburini cited Officer Catamero with was the “Civility” rule. Id. at 10-11. The rule states:

“All personnel of the Department shall be civil, orderly, diligent, discreet, courteous and patient as a reasonable person is expected to be in any situation and shall not engage in any altercation, physical or otherwise, whether on duty or not, with any other member or employee of the Department.” Id. at 3-4 (citing Johnston Police Department Rules and Regulations 100.04-III(B)(21)).

The Arbitrator found that this alleged violation was inapplicable to the incident in question. Id. at 14. She found that the rule was meant to address interactions “between members or employees of the Department.” Id. at 15. The Arbitrator determined that since Roberti herself was not part of the Johnston Police Department, the rule did not apply to Officer Catamero’s interaction with her. Id. at 15 (citing Johnston Police Department Rules and Regulations 100.04-III(B)(21)).

The Arbitrator next found that Officer Catamero did not violate the “Discourtesy” rule as Chief Tamburini had decided. Id. at 15-16. The “Discourtesy” rule requires that Johnston police officers comport themselves in a courteous manner. Id. at 4. The rule states:

“Discourtesy, rudeness, or insolence to a member or civilian. An officer shall be courteous and tactful in the performance of his duties and shall control his temper, exercising the utmost patience and discretion, even in the face of extreme provocation.” Id. (citing Johnston Police Department Rules and Regulations 100.04-III(D)(1)(f)).

Crediting Bottella’s testimony, the Arbitrator found his testimony to be the only independent testimony. Award 15. She relied on Bottella’s testimony that Officer Catamero did not display behavior that was discourteous, rude, or insolent. Id. at 15-16.

Finally, the Arbitrator found that Officer Catamero did not violate § D(1)(b) “Conduct Unbecoming an Officer,” which states:

“Conduct unbecoming an officer shall include that which brings the Department into disrepute or reflects discredit upon the officer as a member of the Department, or that which impairs the operation or efficiency of the Department or officer.” Id. at 4 (citing Johnston Police Department Rules and Regulations 100.04-III(D)(1)(b)).

The Arbitrator broke down the “Conduct Unbecoming an Officer” rule into three distinct parts. Award 16. She first decided that there was no evidence that the Johnston Police Department’s reputation suffered because of the incident or that there was any effect on Officer Catamero’s reputation in the community. Id. She found the other phrases—“brings the Department into disrepute or reflects discredit upon the officer as a member of the Department”—are ambiguous and therefore do not put officers on notice regarding which actions are inappropriate. Id. The Arbitrator found that “there was no evidence in the record to show that the operation or efficiency of the Department or officer was impaired.” Id.

Johnston filed both of its motions on October 20, 2016. IBOP filed its cross-motion on November 9, 2016. The Court heard argument on January 19, 2017.

II

Standard of Review

Rhode Island law permits arbitrators to settle controversies between an employer and a labor union if agreed to previously by both parties. Sec. 28-9-1. In matters of employee discipline, arbitrators—unless limited in writing by both parties—may “modify the penalty imposed by the employer and/or otherwise fashion an appropriate remedy.” Id. Any aggrieved party may appeal an arbitrator’s decision to the courts. Sec. 28-9-25.

In an arbitration appeal, “[i]t is well settled that, in the typical case, the judiciary’s role in the arbitration process is limited.” Providence Sch. Bd. v. Providence Teachers Union, Local 958, AFT, AFL-CIO, 68 A.3d 505, 508 (R.I. 2013) (quoting Drago Custom Interiors, LLC v. Carlisle Bldg. Sys., Inc., 57 A.3d 668, 670 (R.I. 2012)) (citations omitted). Rhode Island law states that awards made by an arbitrator in the labor context may be vacated for three reasons: (1) the award “was procured by fraud”; (2) “the arbitrator . . . exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made”; or (3) “there was no valid submission or contract.” Sec. 28-9-18. In this case, Johnston does not rely on either reason (1) or reason (3), but contends the Arbitrator exceeded her powers. An arbitrator exceeds his or her powers when rendering a decision by failing to “‘draw [the decision’s] essence’ from the agreement,” failing to base his or her decision “upon a ‘passably plausible’ interpretation” of the contract, by “manifestly disregard[ing] a contractual provision, or” by “reach[ing] an irrational result.” Woonsocket Teachers’ Guild, Local 951, AFT v. Woonsocket Sch. Comm., 770 A.2d 834, 837 (R.I. 2001)

(quoting State Dep't of Children, Youth and Families v. R.I. Council 94, Am. Fed'n of State, Cty., and Mun. Emps., AFL-CIO, 713 A.2d 1250, 1253 (R.I. 1998)).

A court may not reverse an arbitrator's award based solely on the "court's disagreement with the arbitrators' interpretation of the contract" as doing so would invalidate the previous agreement between the parties and "threaten the strong public policy that favors private settlement of grievance disputes arising from collective bargaining agreements." Jacinto v. Egan, 120 R.I. 907, 911-12, 391 A.2d 1173, 1175 (1978) (quoting Belanger v. Matteson, 115 R.I. 332, 355-56, 346 A.2d 124, 137-38 (1975)). "The deference due to the arbitrator is such that an arbitrator's mere error of law is insufficient grounds to vacate his award." Berkshire Wilton Partners, LLC v. Bilray Demolition Co., Inc., 91 A.3d 830, 836 (R.I. 2014) (citing Bradford Dyeing Ass'n, Inc. v. J. Stog Tech GmbH, 765 A.2d 1226, 1232 (R.I. 2001)). Further, an arbitrator "manifest[ly] disregard[s] . . . the law" only when his or her decision is based on "more than a mistake of law or a clear error in fact finding." Goldman v. Architectural Iron Co., 306 F.3d 1214, 1216 (2d Cir. 2002) (citing DiRussa v. Dean Witter Reynolds, Inc., 121 F.3d 818, 821 (2d Cir. 1997)) (citations omitted).

III

Analysis

Johnston argues that this Court should vacate the Arbitrator's award as she exceeded her authority because her decision was completely irrational, not a passably plausible interpretation of the contract, and, she substituted her own judgment for that of Chief Tamburini. IBOP argues that the Arbitrator's decision drew its essence from the contract and is a rational decision evidencing a passably plausible interpretation of the contract.

A

“Draws Its Essence from the Agreement”

Article XII, Section 1(D) of the CBA states:

“No member of the bargaining unit shall be disciplined without just cause. In accordance with Rhode Island General Law 42-28.6-13, any disciplinary action up to and including a two (2) day suspension may be appealed through the grievance procedure, if the aggrieved officer chooses to appeal.” CBA Art. XII, § 1(D).

Rhode Island law declares that any two day suspension of a police officer without pay is “subject to the grievance provisions of any applicable collective bargaining agreement.” G.L. 1956 § 42-28.6-13. Therefore, within the Johnston Police Department, officer discipline for violating departmental rules and regulations that result in a two day suspension without pay is arbitrable.

At both the hearing and in their memoranda, both parties address the definition of “just cause.” Johnston argues that the Arbitrator was required to determine the meaning of just cause in her decision, citing both Castelli v. Carcieri, 961 A.2d 277 (R.I. 2008) and State Dep’t of Children, Youth & Families, 713 A.2d at 1253. IBOP argues that Johnston had the burden to prove, at arbitration, that it had just cause to suspend Officer Catamero.

While never explicitly defining just cause in her decision, an examination of the Arbitrator’s decision leads to the inexorable conclusion that she found there was no just cause for Officer Catamero’s suspension. Am. Eagle Airlines, Inc. v. Air Line Pilots Ass’n, Int’l, 343 F.3d 401, 409 (5th Cir. 2003) (citing E.I. DuPont de Nemours & Co. v. Local 900 of Int’l Chem. Workers Union, AFL-CIO, 968 F.2d 456, 458–59 (5th Cir. 1992)) (holding “where an arbitrator implicitly finds that just cause exists, he need not recite the operative phrase ‘just cause’”).

The Arbitrator addressed each of the three Police Department Rules & Regulations that Chief Tamburini found Officer Catamero had violated. The Arbitrator found no basis for Chief

Tamburini's determination that Officer Catamero violated Rule 100.04 B.21 "Civility." The Arbitrator interpreted the rule, stating "[a]ccording to the plain language of this rule, it applies to interactions between members and employees of the Employer's Police Department, not between members of the Department and the general public." Award 15. Thus, it can be inferred that if the rule does not apply, then she had to have believed there is no just cause for relying on this rule to suspend Officer Catamero.

The Arbitrator concluded that Officer Catamero had not violated Rule 1000.04(f) "Discourtesy" as there was conflicting testimony on whether Officer Catamero had been discourteous, rude, or insolent during the traffic stop. Id. at 15-16. The Arbitrator, when considering the charge of "Discourtesy," credited one witness, Bottella, who testified that Officer Catamero was not rude, insolent or discourteous. Id.; see also Paulstra CRC Corp. v. United Steel Workers of Am., Local 49, 191 F.3d 453 (6th Cir. 1999) (citing Int'l Bhd. of Firemen & Oilers, Local 261 v. Great N. Paper Co., 765 F.2d 295, 296 (1st Cir. 1985)) (holding "[t]he deference that we must give to an arbitrator's factual findings also entails respecting the arbitrator's credibility determinations"). Again, this conclusion shows that the Arbitrator found no just cause that Officer Catamero had violated the "Discourtesy" rule.

Finally, the Arbitrator found that Chief Tamburini did not have just cause for finding Officer Catamero had violated 100.04(b) as the language in the rule is unclear and "[t]he Employer did not provide any evidence at the hearing to clarify these phrases, nor did it provide any evidence that it has disciplined officers in the past under this rule and, if so, for what reason." ¹ Id. at 16. Finally, the Arbitrator found that the "Conduct Unbecoming" charge was

¹ The Common Law of the Workplace addresses notice of consequences, stating "[a]n employee is entitled to be informed of, or to have a sound basis for understanding, the disciplinary consequences that will result from violating policies or work rules in effect at the employee's

an ambiguous rule, and Johnston provided no evidence that further defined the rule in order for the Arbitrator to determine whether Officer Catamero did, in fact, violate said rule. Id. It is clear that the Arbitrator found no just cause for suspending Officer Catamero because the rule was ambiguous. Id.; see also, Elkouri & Elkouri, How Arbitration Works, ch. 15.3.F.ii (Kenneth May ed., Bloomberg BNA, 8th ed. 2016) (stating “[w]hile fair warning is essential to any disciplinary code, some rules of the workplace are so obvious that no employee can claim ignorance of them or of their consequences”).

In reviewing an arbitrator’s award in a labor dispute, a reviewing court simply determines whether the arbitrator considered the proper sources in resolving the conflict, namely “the contract and those circumstances out of which comes the ‘common law of the shop.’” Jacinto, 120 R.I. at 912, 391 A.2d at 1176 (citations omitted). In the case at hand, the Arbitrator considered both the Johnston Police Department Rules and Regulations and the CBA. See id. at 15-17; see also Cincinnati v. Queen City Lodge No. 69, Fraternal Order of Police, 842 N.E.2d 588, 596 (Ohio Ct. App. 2005) (holding that not considering rules and regulations in an arbitration “would lead to ludicrous results in disciplinary-arbitration cases because an arbitrator could never compare the severity of discipline in similar offenses”). As such, the Arbitrator’s decision drew its essence from the CBA. Woonsocket Teachers’ Guild, Local 951, AFT, 770 A.2d at 837.

place of employment.” National Academy of Arbitrators, The Common Law of the Workplace 196 (Theodore J. St. Antoine ed., BNA Books 1998).

B

“Passably Plausible” Interpretation of the Contract

An arbitrator’s decision in a labor matter may be overturned for failing to base his or her decision on a passably plausible interpretation of the CBA. Woonsocket Teachers’ Guild, Local 951, AFT, 770 A.2d at 839. An arbitrator’s award is not passably plausible if it is “wholly inconsistent with the plain language of the CBA.” Id. Johnston argues that the Arbitrator issued an award not based on a passably plausible interpretation of the CBA, while IBOP argues the alternative.

The Arbitrator ruled against Johnston and Chief Tamburini’s discipline of Officer Catamero. These actions are reasonably within her rights as an arbitrator. See CBA Art. XII, § 1(D) (“[A]ny disciplinary action up to and including a two (2) day suspension may be appealed through the grievance procedure, if the aggrieved officer chooses to appeal”); CBA Art. XII, § 2(C) (“Any decision handed down by the majority of the arbitration board shall be final and binding upon the parties”). The Arbitrator then considered the Rules and Regulations of the Johnston Police, which are the basis on which Officer Catamero was suspended, and found that there was no just cause for his suspension. This Court will not substitute its own interpretation of the Rules and Regulations of the Johnston Police Department for that of the Arbitrator’s. Jacinto, 120 R.I. at 911–12, 391 A.2d at 1175. The Arbitrator’s decision interprets the CBA and the Johnston Police Department Rules and Regulations as required by the CBA and Rhode Island law to find there was no just cause. Her decision is not “wholly inconsistent” with either. Woonsocket Teachers’ Guild, Local 951, AFT, 770 A.2d at 839. As such, the Arbitrator’s interpretation of the CBA is passably plausible. Sec. 28-9-18(a)(2).

C

An Irrational Result

An arbitrator's decision in a labor dispute may also be overturned if the arbitrator ruled in such a way that his or her decision reached "an irrational result." Woonsocket Teachers' Guild, Local 951, AFT, 770 A.2d at 837. IBOP argues that the Arbitrator's interpretation of the CBA was rational. Johnston argues that the result is clearly irrational.

Johnston argues, specifically, that the Arbitrator produced an irrational award by relying on a trifling fact—that Roberti was the daughter of a police officer. In the arbitration award, the Arbitrator writes that the evidence that Roberti was the daughter of a police officer and "Fraraccio's assessment that Roberti has an attitude" led her to conclude that Roberti was attempting "to use her connections to help him out." Award 14. Johnston argues that this conclusion led to an irrational result because it was only mentioned as an aside by Fraraccio in his testimony at the arbitration hearing and that Roberti never mentioned it to Officer Catamero during the stop or to Major Razza during the investigation. While this conclusion is arguably illogical it does not make the Arbitrator's decision irrational.

As discussed above, the Arbitrator analyzed each of the applicable rules and regulations without regard to "the father is a police officer" theory. Further, the Arbitrator wrote:

"Even if I accept that Roberti's complaint was genuine and not an attempt at retaliation for, at most, being embarrassed at not having been given her due as the daughter of a police officer (although she never identified herself as such), I do not find Grievant's behavior violated any of the Employer's Police Department Rule & Regulations." Award 15.

Consequently, despite the Arbitrator's mention and examination of the occupation and potential influence over the case of Roberti's father, there were other bases on which she constructed her award. See id.; see also, United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S.

593, 598 (1960) (stating “[a] mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award”). As such, her decision was not irrational.

IV

Conclusion

After review, this Court finds the Arbitrator’s decision drew its essence from the CBA between Johnston and IBOP and from the Johnston Police Department Rules and Regulations. The Arbitrator based her decision on her interpretation of the contract, which this Court has found passably plausible. At no point did the Arbitrator ignore a provision of the contract. Further, the Arbitrator’s decision was not the irrational result of her interpretation of the contract. Therefore, this Court denies Johnston’s Motion to Vacate the Arbitration Award and affirms IBOP’s Motion to Confirm the Arbitration Award. This Court also denies Johnston’s Motion to Stay Implementation of the Arbitration Award. Counsel shall submit the appropriate Order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Town of Johnston v. International Brotherhood of Police Officers, Local 307, by and through its President, James Brady

CASE NO: PM-2016-3463

COURT: Providence County Superior Court

DATE DECISION FILED: February 20, 2017

JUSTICE/MAGISTRATE: Licht, J.

ATTORNEYS:

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