

August 26, 2020

## ADR Case Update 2020 - 16

### Federal Courts

- **AWARD NOT ARBITRARY OR CAPRICIOUS**

*Armstrong v. Michigan Bureau of Services for Blind Persons*  
2020 WL 4557843  
United States Court of Appeals, Sixth Circuit  
August 7, 2020

The Randolph-Sheppard Act requires government agencies to set aside certain contracts for sight-challenged vendors. States take the lead in licensing vendors and matching them with contracts. After Michigan denied Sheila Armstrong's bid for a contract to stock vending machines near Grayling, MI, Armstrong filed a grievance. An ALJ ruled in her favor, recommending that Armstrong get priority for the next contract. Armstrong nonetheless requested federal arbitration, asserting that she should get the Grayling route and \$250,000 in damages. While the arbitrators ruled that Armstrong should get Grayling, they declined to award damages, asserting that the request lacked sufficient evidence and was too speculative. Both sides challenged the decision. The court upheld the arbitration and the state granted Armstrong the Grayling license. All that remained was the request for damages.

The United States Court of Appeals for the Sixth Circuit affirmed. Federal courts review the outcome of an arbitration under Randolph-Sheppard the same way they would a final agency decision under the APA, setting it aside if a panel's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. So long as the court can reasonably discern from the decision-making process why the arbitrators did what they did, and so long as they considered all the relevant evidence and articulated a satisfactory explanation, the court will not set aside the decision. This decision met that standard. In rejecting the request for damages, the arbitrators reasoned that the earnings could not be determined with any accuracy. Armstrong's assertion in her reply brief that the arbitrators erred in denying her a chance to introduce evidence of damages was a little too late. She had opportunities to introduce evidence

but did not do so. The Court also held that Armstrong could not challenge Michigan officials' actions in denying her a contract under Randolph-Sheppard Act under §1983.

- **AWARD BECAME FINAL WHEN ARBITRATOR RESOLVED DISPUTE AS TO THE INTERPRETATION OF THE AWARD, RATHER THAN WHEN AWARD ISSUED**

*International Union, United Auto, Aerospace, and Agricultural Implement Workers of America, AFL-CIO; UAW Local 716 v. Trane U.S. Inc.*  
2020 WL 4354898  
United States Court of Appeals, Eighth Circuit  
July 30, 2020

After Trane closed its Fort Smith, Arkansas plant, Trane and the Union proceeded to arbitration on the issue of vacation pay. In June of 2018, the arbitrator entered an award providing that all employees "shall be made whole for the full allowance of vacation pay for which they would have qualified for in 2017, according to the amount of their seniority." The award noted that the arbitrator retained jurisdiction until the terms of the award were met. Trane and the Union interpreted the award differently. After paying three employees for vacation time, Trane contacted the arbitrator to address its compliance with the award. In September 2018, the arbitrator agreed that Trane complied with the award and stated that he "was no longer retaining jurisdiction in this matter." The Union sued Trane in December of 2018, seeking to compel further arbitration or, in the alternative, to vacate and remand the final arbitration award. The court granted Trane's motion to dismiss on the grounds that the June award was a final award and thus the Union was untimely in its claim to vacate and that the Union could not compel arbitration regarding the additional employees because that issue was considered in the June award. The Union appealed.

The United States Court of Appeals for the Eighth Circuit reversed and remanded. The text of the June award indicated that it was not the final award. The arbitrator expressly retained jurisdiction until the terms of the award were met, with language indicating that the arbitrator contemplated possible disputes concerning the terms of the award. When such a dispute arose, the arbitrator issued the September award. The Union's claim was timely.

- **ARBITRATOR'S COMMENTS ON THE RECORD REGARDING UBER NOT CAUSE FOR VACATUR**

*Spencer Meyer v. Travis Kalanick and Uber*  
15 Civ. 9796  
United States District Court Southern District of New York  
August 3, 2020

Spencer Meyer filed a putative class action against Travis Kalanick, co-founder and then-CEO of Uber, alleging that Uber's pricing model amounted to horizontal price-fixing, in violation of the relevant antitrust laws. The parties proceeded to arbitration and the arbitrator entered an award in favor of Uber. The plaintiff moved to vacate on the grounds that the arbitrator manifested evident partiality toward Uber when he, allegedly, took a photo of Kalanick and then said, in concluding remarks: "I must say I act out of fear. My fear is that if I ruled Uber illegal, I would need security. I wouldn't be able to walk the streets at night. People would be after me."

The United States District Court for the Southern District of New York denied the motion. The plaintiff waived his right to seek vacatur on these grounds by waiting until after the arbitrator ruled against him before raising the concerns. In any event, the arbitrator's conduct did not justify vacatur. Evident partiality may be found only where a reasonable person would have to conclude that a party was partial to one party to the arbitration. Mere speculation is insufficient. The Court found the arbitrator's remarks were an attempt at humor – one of many made by the arbitrator throughout the hearing. "While perhaps inappropriate (or, worse yet, not as humorous as some of the arbitrator's better jokes), the remarks were not inconsistent with impartiality once their patently jestful intent was recognized." As for the photo, there was reason to doubt that it occurred and speculation was insufficient to justify vacatur.

*Case research and summaries by Deirdre McCarthy Gallagher and Richard Birke.*

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