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June 19, 2019

ADR Case Update 2019 - 12

New York

- **ARBITRATOR EXCEEDED AUTHORITY**

In the Matter of Arbitration between Czerwinski and New York State Department of Corrections and Community Supervision

2019 WL 2375372

Supreme Court, Appellate Division, Third Department, New York

June 6, 2019

Czerwinski was a nurse administrator with the Department of Corrections and Community Supervision (DOCCS). DOCCS suspended her without pay, later charging her with misconduct and imposing a penalty of dismissal. Pursuant to the CBA, the matter proceeded to arbitration. The arbitrator determined that Czerwinski was guilty of misconduct, imposed a one-month suspension as penalty, and awarded Czerwinski back pay for the period of interim suspension. Czerwinski's motion to confirm the award was granted; DOCCS appealed.

The Supreme Court, Appellate Division, Third Department, New York affirmed as modified. DOCCS contended that the arbitrator exceeded his authority in awarding back pay. The Court agreed. The arbitrator's award was based upon a determination that DOCCS lacked probable cause to suspend Czerwinski. The Court previously held that hearing evidence should be considered in determining probable cause. Here, the arbitrator relied on information contained in the notice of suspension, not hearing evidence. The portion of the order granting Czerwinski back pay during her interim suspension was vacated and the matter remitted for a rehearing on that issue.

Texas

- **COURT LACKED AUTHORITY TO ORDER ADJUSTER'S PARTICIPATION IN MEDIATION**

In Re: Mary Anne Vinson, Relator

2019 WL 2417441

Court of Appeals of Texas, El Paso
June 10, 2019

Vinson, an Allstate adjuster, negotiated with motorist Jaime Soto after his car accident with an Allstate insured motorist. Vinson did not attend the court ordered mediation, although another Allstate representative did. When the mediation ended after two hours without settlement, Soto filed a motion to compel Vinson to attend the remaining two hours of mediation. The court granted the motion and entered an order to compel Vinson to attend mediation. Vinson filed a mandamus petition against the trial court judge, contending that the trial court abused its discretion by compelling her to attend mediation.

The Court of Appeals of Texas, El Paso granted the petition. In his mandamus response, Soto contended that Vinson “personally interfered with the core function of the trial court” by refusing to attend mediation. The initial mediation referral order, however, did not order Allstate or Vinson to attend mediation. Soto cited no authority to support his position that the court could compel a particular representative to participate simply because that representative was more familiar with the case. Soto did not meet his burden to show that the Allstate representative in attendance did not have full settlement authority. In the absence of such evidence, the trial court did not have authority to compel Vinson’s attendance.

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

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