August 14, 2019

ADR Case Update 2019 - 16

Federal Circuit Courts

- **ARBITRATOR DID NOT EXCEED AUTHORITY**

  Steward Holy Family Hospital v. Massachusetts Nurses Association
  2019 WL 3491178
  United States Court of Appeals, First Circuit
  August 1, 2019

  Steward Hospital terminated Maureen Bean's employment after Bean grabbed a colleague's face in a dispute about vacation requests. The Mass Nurses Association (MNA) initiated a grievance, asserting no just cause for termination under the collective bargaining agreement (CBA). The dispute proceeded to arbitration, with the arbitrator finding that while there was misconduct, termination was unwarranted. The arbitrator directed the Hospital to reduce the penalty to a written warning and reinstate Bean with backpay. The Hospital brought action to vacate the award and the court entered summary judgment in favor of the Hospital, finding that the arbitrator exceeded his authority under the CBA. MNA appealed.

  The United States Court of Appeals for the First Circuit reversed. The CBA categorized employee infractions into 3 groups, with Group III infractions warranting immediate termination. The lower court found that the arbitrator's characterization of Bean's conduct as a civil battery put it into the Group III category. The arbitrator, however, did not expressly assign Bean's offense to any group, finding that her actions called for progressive discipline, an approach applied to Group I and II infractions. Nothing in the CBA required the arbitrator to classify Bean's conduct as a Group III offense. The Hospital asserted that once the arbitrator concluded there was just cause for discipline, the arbitrator lacked authority to modify that discipline, per CBA language that limited the arbitrator's authority to interpretation and application of the parties' agreement and allowed the Hospital to use whatever level of discipline it believed appropriate. The CBA provided, however, that the Hospital's right to discipline workplace conduct was conditioned on notions of just cause and its use of progressive discipline, the reasonableness of which was subject to arbitral review. The arbitrator's authority was explicitly limited elsewhere in the CBA (in regard to disciplinary action related to the no strike provision), but no such language was included here. "The fact that the same CBA eschews such simple and plain language for other conduct…supports the arbitrator's assumption that his authority was not so limited."

- **VACATUR OF AWARD NOT WARRANTED**

  Dialysis Access Center et al., v. RMS Lifeline
  2019 WL 3491172
  United States Court of Appeals, First Circuit
  August 1, 2019

  Dialysis company, DAS, and management company, RMS, entered into a management services agreement (MSA) to develop and operate a center in Puerto Rico. The MSA provided for termination by either party for cause and for binding arbitration under AHLA Rules. The relationship between the parties soured in 2010, and arbitration-fueled litigation ensued. After the arbitrator issued a decision in favor of RMS, DAC filed a complaint to vacate the award. The court adopted the magistrate judge's recommendation that the complaint be denied and DAC appealed.

  The United States Court of Appeals for the First Circuit affirmed. DAC asserted that the Puerto Rico Arbitration Act (PRAA), not the FAA, should have governed the court's standard of review. Parties are free to contract around the application of the FAA in favor of state arbitration law; DAC asserted that the parties' choice of law provision designating Puerto Rico law as controlling did just that. A general choice of law provision, however, was not enough to displace the FAA's standard of review. DAC also asserted that the arbitrator engaged in misconduct by refusing to consider evidence. The Court will vacate only when the arbitrator's refusal to consider disputed evidence was in bad faith or so gross as to amount to affirmative misconduct and when the exclusion of relevant evidence deprives a party of a fair hearing, arguments that DAC did not assert. Much of the evidence DAC claimed was ignored was, in fact, considered by the arbitrator. DAC argued that the arbitrator exceeded his powers in his awards of attorney's fees and prejudgment interest, but the MSA permitted the arbitrator to award fees and interest. DAC's argument that the arbitrator exceeded his powers in damages computations was waived for lack of development. DAC also argued that the arbitrator manifestly disregarded the law, but failed to show that the arbitrator recognized the applicable law and ignored it. The arbitrator rejected DAC's arguments – but rejection was not ignoring.

- **PARTIES' CONDUCT SHOWED THAT NO PRIOR ARBITRATION AGREEMENT CONTROLLED**

  GGNSC Louisville Hillcreek, LLC v. Estate of Robert Bramer, through Margaret Bramer
  2019 WL 3519694
  United States Court of Appeals, Sixth Circuit
  August 2, 2019

  Robert Bramer was admitted to Hillcreek Nursing Home in Kentucky three times. Each time he was admitted, he was presented with an admissions packet that included an ADR Agreement. A separate Admission Agreement provided "If you…have executed an ADR Agreement with us in connection with any admission…then that agreement shall be, and remain, binding upon you." The parties disputed about the validity of the first two agreements, but agreed that the third agreement was unsigned. After Robert died from a head injury sustained in a fall, his wife, Margaret, sued Hillcreek in state court for negligence. Hillcreek filed a petition in federal court to enforce the arbitration agreements. The court denied the petition and Hillcreek appealed.

  The United States Court of Appeals for the Sixth Circuit affirmed. The crux of the case was the impact of the third Agreement on the previous Agreements. Despite the language in the Admissions Agreement providing that an executed ADR Agreement would remain binding, Hillcreek presented the same contract – with identical terms – to the Bramers three times. Hillcreek's representation of the agreement had the legal effect of abandonment. The question then became whether the Bramers' rejection of the new offer – that was identical to the older offer – terminated the prior offers in the contract for arbitration. The Court found it did: "the effect of the Bramers' refusal to sign the third Agreement was that no contract was formed, and the earlier contracts were abandoned." Each presentation of the contract constituted a new offer that was inconsistent with a contract being in force. By electing not to sign the third Agreement, the Bramers acquiesced in Hillcreek's abandonment of the earlier agreement.

Texas

- **PLAYER'S CLAIMS WITHIN SCOPE OF ARBITRATION AGREEMENT**

  Houston NFL Holding v. DeMeco Ryans
  2019 WL 3484083
  Court of Appeals of Texas, Houston (1st. Dist.)
  August 1, 2019

  Ryans, an NFL linebacker with the Philadelphia Eagles, suffered a career ending injury during an away game at NRG Stadium against his former team, the Houston Texans. Ryans sued the Texans in state court, alleging a claim for premises liability as an invitee. Specifically, he contended that the Texans breached their duty of ordinary care by negligently selecting an unreasonably dangerous design for the field. The Texans filed a motion to compel arbitration under Article 43 ("Non-Injury Grievance") of the Collective Bargaining Agreement (CBA) between the NFL's club owners and players' union. The court denied the motion and the Texans filed an accelerated interlocutory appeal.

  The Court of Appeals of Texas, Houston (1st Dist.) reversed and remanded. Article 43 of the CBA provided that any dispute involving the interpretation of, application of, or compliance with any provision of the CBA, the NFLA Player Contract, the Practice Squad Player Contract, or any provision of NFL Constitution, Bylaws, or Rules pertaining to terms and conditions of employment would proceed to arbitration. Ryans contended that although Article 43 was a valid arbitration agreement, it was narrow in scope and did not encompass state law tort claims. Ryans argued that the Article 43 heading (non-injury grievance) indicated that his claim fell outside the article's scope. The Court disagreed, noting that the heading was meant to distinguish this grievance procedure from Paragraph 13 of the NFL Player Contract, which concerned injury grievances, not to indicate that the article excluded claims involving injuries. Additionally, the CBA provided that its headings were "solely for the convenience of the parties, and shall not be deemed part of, or considered in construing, the Agreement." The Court also found that the CBA required arbitration of Ryans' claims. The language of Article 43 was broad and of an expansive reach capable of encompassing not only claims that arose under the contract, but also disputes having a significant relationship to the CBA and other listed documents. Ryans' claim involved the interpretation and application of the NFL Playing Field Specifications, which were part of the NFL Rules, and which addressed some of the "exact issues" about which Ryans' complained, such as field hardness, depth, and evenness.

- **NONDISCLOSURE OF PRESENTATION GIVEN BY ARBITRATORS UNINVOLVED IN THE CASE DID NOT CREATE A REASONABLE IMPRESSION OF PARTIALITY**

  Xerox Commercial Solutions, LLC v. Victor Segura
  2019 WL 3423507
  Court of Appeals of Texas, El Paso
  July 30, 2019

  Victor Segura filed an employment discrimination suit against Xerox. On the eve of a hearing on Xerox's motion to compel arbitration, Segura filed a nonsuit. After some disagreement, the parties eventually agreed on an arbitrator. Xerox prevailed in the arbitration on the procedural defense that the arbitration was not timely initiated. After the case was decided, Segura's counsel received a disclosure from JAMS in another case, stating that two JAMS arbitrators had "presented a very basic presentation regarding arbitrator rules, procedures, and best practices" to Xerox personnel. The court allowed Segura to withdraw the nonsuit and Segura filed a motion to vacate the award, claiming that the arbitrator: failed to disclose a conflict of interest and committed misconduct by failing to hear evidence. Segura attached the disclosure to his motion and represented that had he known of the connection between JAMS and Xerox, he would have objected to the choice of arbitrator. The court granted the motion and Xerox appealed.

  The Court of Appeals of Texas, El Paso, reversed and remanded. None of the grounds raised by Segura supported vacatur. Segura claimed that the arbitrator demonstrated "evident partiality" by failing to disclose a conflict stemming from two other JAMS arbitrators, who had put on a program for Xerox's in-house legal staff a year and a half before the arbitration was initiated. An arbitrator

demonstrates evident partiality if he or she does not disclose facts that might, to an objective observer, create a reasonable impression of the arbitrator's partiality. Disclosure is required only if facts are material. The record here did not support anything more than the trivial, or non-material sort of non-disclosure that would not create a reasonable impression of partiality. The arbitrator was not involved in the presentation and there was no evidence that he was even aware of it. The absence of his knowledge of the seminar was fatal to Segura's claim. Segura tried to focus on the potential bias of JAMS as an entity; the arbitration agreement, however, required JAMS to investigate the potential bias of neutrals it offered for the job, not all of the neutrals in the JAMS network, and did not provide for JAMS to disclose entity conflicts. As far as Segura's argument that arbitrator committed misconduct, the Court noted that an arbitrator's decision is not the result of misconduct simply because one thinks it was wrongly decided. The arbitrator did not apply a statute of limitations more restrictive than that provided by law. The arbitrator did not commit misconduct by granting the motion to dismiss; there was no claim that Segura was denied the opportunity to oppose the motion to dismiss.

Florida

- **SURROGATE COULD NOT CONSENT TO ARBITRATION PROVISION IN NURSING HOME ADMISSION FORM**

  Manor Oaks v. Rosemarie Campbell
  2019 WL 3436915
  District Court of Appeal of Florida, Fourth District
  July 31, 2019

  Stanley Chanson designated Rosemarie Campbell as his health care surrogate through a document titled "Durable Power of Attorney Containing Health Care Surrogate Provisions." When Chanson was admitted to Manor Oaks Nursing Home, Campbell signed the admission paperwork, which included an arbitration provision. After Chanson died, Campbell, as representative of his estate, sued Manor Oaks for damages. Manor Oaks moved to compel arbitration. The court denied the motion and Manor Oaks appealed.

  The District Court of Appeal of Florida for the Fourth District affirmed. Courts analyze power of attorneys (POAs) to determine whether they authorize a designee to consent to an arbitration provision in a contract. A court will compel the enforcement of the arbitration provision where a POA makes a specific grant of such authority or unambiguously makes a broad, general grant of authority. In this case, the document gave limited, rather than broad, authority to the health care surrogates Campbell and Mark Chanson. The focus of the document was on any matter pertaining to health care decisions, which could not be stretched to embrace business decisions regarding dispute resolution. Reaffirming this finding was that the document granted authority under the FL Statute concerning "Health Care Advance Directives," which did not include within the definition of health care decisions the ability to determine the forum in which disputes arising from health care decisions were to be resolved. While Manor Oaks relied on the mention of POA in the health care surrogate designation document, the body of the document clearly narrowed the scope of authority to health care matters and did not include decisions regarding arbitration of disputes.

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

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