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LEARNING FROM EACH OTHER

February 26, 2020

ADR Case Update 2020 - 4

Federal Circuit Courts

- **VACATUR REVERSED AS ARBITRATOR PROPERLY INTERPRETED CBA**

Zeon Chemicals, L.P. v. United Food and Commercial Workers, Local 72D
2020 WL 727658
United States Court of Appeals, Sixth Circuit
January 31, 2020

The collective bargaining agreement (CBA) between Local 72D (Union) and Zeon Chemicals included an attendance policy that assigned employees a point each time they missed or were late for a shift. When an employee accrued 10 points, Zeon issued a final written warning and one-day suspension; for an employee with 20 years of service, Zeon might impose a 30-day suspension as a final step in the disciplinary process. At 12 points, the employee is discharged. 22-year employee James Jenkins served a 30-day jail sentence for felony battery – and consequently, was fired by Zeon. The Union grieved the discharge and the parties went to arbitration pursuant to the CBA. The arbitrator modified the discharge to a 30-day suspension, reset Jenkins' point total to 8.5, and awarded back pay. The company sued to vacate and the Union to enforce. The court vacated the award on the grounds that the arbitrator misread the agreement and exceeded his authority. The Union appealed.

The Court of Appeals for the Sixth Circuit reversed and remanded. The Court will leave the parties to what they bargained for – an arbitrator's decision – unless the substance of the arbitrator's interpretation is so "off the wall" that it makes implausible the idea that the arbitrator was engaged in interpretation in the first place. This arbitrator's decision demonstrated the hallmarks of interpretation. He explained the background to the dispute, cited and analyzed relevant provisions of the agreement and the attendance policy, explained how each party interpreted the agreement, and evaluated how the agreement applied to this situation. While the Court "might have weighed... (the) considerations differently... the arbitrator's choice did not enter the prohibited land of imposing 'his own brand of industrial justice.'"

- **CASE RENDERED MOOT BY SETTLEMENT AGREEMENT**

Serta Simmons Bedding, LLC v. Casper Sleep, Inc.
2020 WL 717771

United States Court of Appeals, Federal Circuit
February 13, 2020

Serta sued Casper, alleging infringement of three mattress patents. Casper filed motions for summary judgment on the issue of non-infringement. On June 18th, while the motions were pending, the parties executed a settlement agreement in which Casper agreed to pay Serta \$300K by June 28th and cease manufacturing of and marketing around certain products. That same day, the parties filed a Joint Notice of Settlement and Motion to Stay, informing the court that they had a Settlement Agreement and requesting all deadlines stayed until July 5th. On June 20th, without reference to the Settlement Agreement, the court granted Casper's summary judgment motions. The following week, Casper told Serta that it would not make any payments because the summary judgment order rendered the Settlement Agreement null and void. Serta moved to enforce the Settlement Agreement and vacate the summary judgment orders. The court denied the motions, and held that it lacked jurisdiction to enforce the Settlement Agreement once the summary judgment order issued. Serta appealed and Casper cross-appealed.

The United States Court of Appeals for the Federal Circuit vacated and remanded with instructions. Except in unusual circumstances, a settlement moots an action because there is no longer a case or controversy with respect to the settled issues. Casper argued that this Agreement did not because it called for future performance. The Court disagreed, holding that a binding settlement agreement generally moots an action even if the agreement requires future performance. This decision vacated the court's summary judgment order, and the district court retained jurisdiction to enforce the agreement. The Court rejected Casper's request for fees and costs relating to pre-settlement litigation. The Settlement Agreement provided that the parties would bear their own costs, which precluded an award of fees and costs pertaining to proceedings that occurred prior to the execution of the Settlement Agreement.

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

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