SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3684-16T1

TOWNSHIP OF MONROE,

Plaintiff-Respondent,

v.

UNITED SERVICE WORKERS UNION, LOCAL 255, IUJAT,

Defendant-Appellant.

Argued February 26, 2018 – Decided March 16, 2018

Before Judges Ostrer and Rose.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-0715-17.

Gary P. Rothman argued the cause for appellant (Rothman Rocco LaRuffa, LLP, attorneys; Gary P. Rothman, of counsel and on the briefs).

Gregory B. Pasquale argued the cause for respondent (Shain Schaffer, PC, attorneys; Gregory B. Pasquale, on the brief).

PER CURIAM

In this labor arbitration case, defendant United Service Workers Union Local 255, IUJAT ("Union") seeks reversal of the Law Division's April 7, 2017 order. The court's order modified an

arbitrator's award in a dispute between the Union and plaintiff Township of Monroe ("Monroe") concerning the discharge of Jason Kaye, a Monroe employee and Union member. Having reviewed the parties' arguments in light of the record and applicable legal principles, we affirm.

I.

Kaye has been employed by Monroe as an emergency medical technician ("EMT") for more than twenty years. For nearly the same length of time, Kaye has worked for the Department of Public Works ("DPW") in the neighboring Township of Marlboro.

On January 23, 2016, an hour after concluding a twelve-hour EMT shift for Monroe, Kaye worked the 8:00 a.m. to 6:30 p.m. shift for the DPW. Claiming he had a migraine headache, Kaye called out sick for his next EMT shift, which was scheduled to begin later that night. The following day, Kaye worked a thirteen-hour shift at the DPW.

Alleging Kaye used sick time chargeable to Monroe while working at the DPW on January 23, 2016, Monroe filed disciplinary charges against Kaye. Although Monroe subsequently withdrew those charges, it proceeded with the present charges. Because both Monroe and the DPW required Kaye to work during weather-related emergencies, Monroe contended Kaye's dual full-time employment created a conflict of interest. Monroe afforded Kaye the option

of terminating his employment with the DPW or resigning from full-time employment with Monroe, but Kaye declined the offer. As of May 20, 2016, Kaye was terminated as a full-time EMT, but remained employed on a per diem basis at a lesser pay rate and without benefits.[1]

Monroe and the Union are parties to a collective bargaining agreement ("CBA"), which governs the terms and conditions of employment for certain Monroe employees, including Kaye. Pursuant to Article 29 of the CBA, "[a]n employee may be disciplined, suspended or discharged only for just cause." Notably, the CBA does not define "just cause."

The Union grieved Kaye's termination pursuant to the procedure set forth in Article 39 of the CBA. Because the grievance procedure did not result in a satisfactory determination, the parties requested binding arbitration pursuant to Article 40. This article also delineates the arbitrator's duties. Specifically, "[t]he arbitrator's function is to interpret the provision[s] of the [CBA] and to decide cases of alleged violation of such provisions. The arbitrator shall not

[1] Kaye's status as a per diem EMT continued until at least December 22, 2016, the date of the arbitration award. Kaye's current employment status is not part of the record.

supplement, enlarge, or alter the scope or meaning of the [CBA] or any provision therein . . . ."

The sole issue presented to the arbitrator was whether Monroe had "just cause to discharge . . . Kaye, the grievant, pursuant to Article 29 of the CBA? If not, what shall be the appropriate remedy?"

Following a one-day hearing, during which the arbitrator heard the testimony of three Monroe employees, a Union representative, and Kaye, the arbitrator issued a written decision dated December 22, 2016. Although not defined in the CBA, the arbitrator found Monroe had "just cause" to terminate Kaye, but ordered reinstatement to his permanent, full-time EMT position. Finding Kaye partially at fault, the arbitrator ordered reinstatement conditioned on Kaye's executing a "last chance agreement." The arbitration award states, in pertinent part:

> The grievance submitted by [the Union] on behalf of . . . Kaye is sustained, in part, for it is conditioned upon the grievant, . . . Kaye, entering into a "last chance agreement," thus waiving his future prospective appeal rights with . . . Monroe.
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> . . . Monroe had just cause to discharge . . . Kaye, the grievant, pursuant to Article 29 of the CBA. The grievant's failure to report to work on January 23, 2016 with an unexcused absence placed [Monroe] residents at risk. Given the grievant's long term and satisfactory employment record, however, he shall be reinstated provided he enters into a

> last chance agreement with . . . Monroe. [Monroe] shall prepare the "[l]ast [c]hance [a]greement" within ten days of the receipt of this [a]ward. Accordingly, after . . . Kaye enters into the last chance agreement, . . . Monroe shall immediately reinstate . . . Kaye with seniority and benefits to employment as a regular full time [EMT].
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> The grievant's reinstatement shall be without back pay for the period between the date of his termination and the date of his reinstatement.
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> . . . .
>
> [(Emphasis added).]

After the arbitrator denied Monroe's application to modify his decision by excising the portion of the award conditionally reinstating Kaye, Monroe filed an order to show cause in the Law Division. The Union opposed the application, and cross-moved to confirm the award.

In his oral opinion, the trial judge modified the award, stating the "arbitrator may not disregard the term[s] of the parties' agreement." If an "arbitrator decides a matter not submitted to the arbitrator, that matter can be excluded from the award." Relying on Morris Staff Ass'n. v. Cty. Coll. of Morris, 100 N.J. 383, 394 (1985), the court found "the arbitrator improperly decided . . . the question of what would be an appropriate remedy after concluding just cause existed for [Monroe's] discharge of . . . Kaye." The arbitrator's role,

therefore, "was completed once he issued that finding and he had no authority to direct [Monroe] to impose a different penalty." Accordingly, the court granted Monroe's motion to modify the award by excising the reinstatement requirement, and denied the Union's cross-motion to confirm the award. This appeal followed.

On appeal, the Union contends the trial court erred in modifying the award because the arbitrator did not find there was just cause to terminate Kaye. Rather, the award was "reasonably debatable" and, as such, the court should have confirmed the award. The Union claims further the trial court's modification of the award failed to effectuate the arbitrator's intent to afford Kaye a "last chance" instead of immediate discharge.

II.

It is well-established that our review of a trial judge's conclusions of law is de novo. Jones v. Morey's Pier, Inc., 230 N.J. 142, 153 (2017). See also Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.").

Further, we employ a limited standard of review on appeals from arbitration decisions, given our State's "'strong preference for judicial confirmation of arbitration awards.'" N.J. Tpk.

Auth. v. Local 196, I.F.T.P.E., 190 N.J. 283, 292 (2007) (quoting Weiss v. Carpenter, Bennett & Morrissey, 143 N.J. 420, 442 (1996)). In particular, an "arbitrator's award is not to be cast aside lightly" and "judicial interference . . . is to be strictly limited." Morris, 100 N.J. at 390. A reviewing court "may not substitute its judgment for that of a labor arbitrator and must uphold an arbitral decision so long as the award is 'reasonably debatable.'" Id. at 301; see also Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko, 202 N.J. 268, 276-77 (2010) (citations omitted).

"There are, however, limitations to the deference given an arbitrator's decision." Morris, 100 N.J. at 391. A court's deference should not be a "rubber stamp" of the award. Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 13 (2017) (citations omitted). For example, a court "shall modify" an arbitration award in the following circumstances:

> a. Where there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to therein;
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> b. Where the arbitrators awarded upon a matter not submitted to them unless it affects the merit of the decision upon the matter submitted; and
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> c. Where the award is imperfect in a matter of form not affecting the merits of the controversy.

> The court shall modify and correct the award, to effect the intent thereof and promote justice between the parties.
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> [N.J.S.A. 2A:24-9 (emphasis added).]

Regarding subsection (b), "when arbitrators decide something that no one asked them to decide, unless they had to do so in order to decide that which was submitted, the modification or correction would presumably be the excision of that matter from the award." Perini Corp. v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479, 542 (1992) (Wilentz, C.J., concurring). Specifically, an arbitrator's authority is limited "by the questions framed by the parties in a particular dispute." Ciripompa, 228 N.J. at 12 (2017) (quoting Local No. 153, Office & Prof'l Emps Int'l Union v. Trust Co. of N.J., 105 N.J. 442, 449 (1987)); see also Habick v. Liberty Mut. Fire Ins. Co., 320 N.J. Super. 244, 254 (App. Div. 1999) (holding an "award must be modified to exclude those findings as beyond the scope of the arbitrator's authority").

Here, we are not persuaded by the Union's argument that the arbitrator did not find "just cause" to terminate Kaye. On the contrary, the arbitrator's award states explicitly, "Monroe had just cause to discharge . . . Kaye, the grievant, pursuant to Article 29 of the CBA." Notwithstanding the "mitigating factors" cited by the arbitrator, i.e., Kaye's length of service and generally satisfactory attendance record, the arbitrator clearly

answered the sole issue before him in the affirmative. We agree, therefore, with the trial court that the arbitrator's job was "completed once he issued that finding and he had no authority to direct [Monroe] to impose a different penalty." See also Morris, 100 N.J. at 393. In doing so, the arbitrator addressed the second part of the issue even though a lesser remedy was no longer viable. See Ciripompa, 228 N.J. at 12; N.J.S.A. 2A:24-9(b).

Nor do we find merit in the Union's claim that the court's decision to excise the reinstatement requirement ignored the final clause of the modification statute, "[t]he court shall modify and correct the award, to effect the intent thereof and promote justice between the parties." N.J.S.A. 2A:24-9. The Union misreads the plain language of this clause, arguing it applies to the arbitrator's intent, thereby allowing him to fashion an alternate remedy after he found Monroe had just cause to terminate Kaye. The clause, however, applies to the intent of the award, which is Monroe's discharge of Kaye for just cause. Ibid.

Indeed, we find the intent of the award is underscored by the arbitrator's determination that Kaye's "failure to report to work on January 23, 2016 with an unexcused absence placed [Monroe] residents at risk." Further, the arbitrator ordered reinstatement "without back pay for the period between the date of [Kaye's] termination and the date of his reinstatement." These findings

support the arbitrator's decision that there existed just cause to discharge Kaye, and that the award, therefore, is not "reasonably debatable." Morris, 100 N.J. at 391.

We also agree with the trial court that the arbitrator's conditional reinstatement "ignored the contractual provision that prohibited him from supplementing, enlarging, or modifying any provision of the parties' agreement." The trial court's determination is consistent with the Court's ruling in Morris,

> [w]hen parties have agreed, through a contract, on a defined set of rules that are to govern the arbitration process, an arbitrator exceeds his powers when he ignores the limited authority that the contract confers. The scope of an arbitrator's authority depends on the terms of the contract between the parties.
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> [Id. at 391 (citations omitted).]

Finally, we dismiss the Union's argument that the trial court erroneously relied on Morris because that case implicated the vacatur statute, N.J.S.A. 2A:24-8, and not the modification statute, N.J.S.A. 2A:24-9, at issue here. Simply put, both statutes permit the court to correct a decision by an arbitrator that exceeds the authority delegated by the parties. Compare N.J.S.A. 2A:24-8(d), with N.J.S.A. 2A:24-9(b).[2]

[2] Subsection (d) of N.J.S.A. 2A:24-8 provides for an award to be vacated "[w]here the arbitrators exceeded or so imperfectly

Notably, the Morris Court observed the arbitrator was "free to apply his special expertise and determine that the[] offenses [at issue did] not rise to a level of misconduct that constitutes just cause for discharge. Had the arbitrator so concluded, we assume that the proper remedy would have been a disciplinary penalty less severe than that of discharge." Morris, 100 N.J. at 394.

Here, based on the issue presented by the parties, had the arbitrator found Kaye's actions did not warrant just cause for discharge, he could have awarded a "disciplinary penalty less severe than that of discharge." Ibid. Instead, once he decided Monroe had just cause to discharge Kaye, the arbitrator exceeded the power set forth in the contract, and the award was properly modified by the trial court. See id. at 398-99.

To the extent not specifically addressed herein, the parties' respective additional appellate arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

executed their powers that a mutual, final and definite award upon the subject matter submitted was not made."