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Labor Relations - Review of Arbitration Awards - Fifth Circuit Holds that since an Arbitrator Implicitly Found Just Cause for Termination a Remedy other than Termination Was beyond the Scope of the Power Given to the Arbitrator by the Collective Bargaining Agreement: *American Eagle Airlines, Inc. v. Air Lines Pilots Association, International*

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**LABOR RELATIONS – REVIEW OF ARBITRATION
AWARDS – FIFTH CIRCUIT HOLDS THAT SINCE AN
ARBITRATOR IMPLICITLY FOUND JUST CAUSE FOR
TERMINATION A REMEDY OTHER THAN TERMINATION
WAS BEYOND THE SCOPE OF THE POWER GIVEN TO
THE ARBITRATOR BY THE COLLECTIVE BARGAINING
AGREEMENT: *AMERICAN EAGLE AIRLINES, INC. v.
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL***

AMY EVANS ROMAN*

THE UNITED STATES Supreme Court has reiterated the proposition that courts should not review the merits of an arbitration award under collective bargaining agreements even when the “award rests on errors of fact or on misinterpretation of the contract.”¹ This extreme deference rests on public policy that supports arbitration of labor disputes.² In the recent case of *American Eagle Airlines, Inc. v. Air Line Pilots Ass’n, Int’l*,³ the Fifth Circuit reversed an arbitration award, which reinstated an airline pilot after concluding that the arbitrator had implicitly found “just-cause” for the termination of the airline pilot.⁴ Furthermore, the court held that once the arbitrator had found “just cause” for termination, he exceeded his authority by fashioning an alternate remedy to termination.⁵

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¹ *United Paperworkers Int’l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 36 (1987); *accord United Steelworkers of America v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 596 (1960).

² *Misco*, 484 U.S. at 36; *United Steelworkers*, 363 U.S. at 596.

³ *American Eagle Airlines, Inc. v. Air Line Pilots Ass’n, Int’l*, 343 F.3d 401, 404 (5th Cir. 2003).

⁴ *Id.* at 409.

⁵ *Id.* at 410.

American Eagle Airlines (Eagle) issued Captain Terry Balsler a notice of termination after an investigation prompted by the complaint of a cleaning and catering employee, Mr. Walckhoff, with whom Balsler had spoken.⁶ During the conversation with Mr. Walckhoff, Captain Balsler “displayed a medal with a reverse swastika on it” and announced his displeasure concerning money spent on African-Americans and Latinos.⁷ Subsequently, Mr. Walckhoff filed a complaint with Eagle. The investigation of this complaint also led to the findings that Captain Balsler “carried a dirk with a three and one-half-inch blade into secure areas of the airport” and nodded off while on the clock.⁸ The notice of termination informed Captain Balsler that he was being terminated for violating security regulations by carrying a dirk on board, for sleeping while on board an aircraft, as well as for harassing Walckhoff.⁹

Ten days after receiving the notice, the Air Line Pilots Association (ALPA) informed Eagle of Captain Balsler’s intent to invoke the collective bargaining agreement’s (CBA) grievance procedures.¹⁰ Two months after their initial notice, the ALPA wrote a letter to Eagle referencing a conversation in which the Chief Pilot had informed the ALPA that she planned to forego the first-step hearing, and that Balsler and the ALPA therefore should treat the grievance as denied.¹¹ The ALPA then submitted the grievance to the System Board (Board), which served as a neutral arbitrator under the terms of the CBA.¹² The Board concluded that Eagle breached the CBA by failing to hold the first step hearing and that Balsler’s actions violated the terms of the CBA.¹³ However, because both parties breached the CBA, the Board determined that it was appropriate to penalize both Eagle and Captain Balsler. Accordingly, in the light of Eagle’s breach, the Board refused to uphold Balsler’s termination, and instead imposed a ten-week unpaid suspension as the more suitable remedy.¹⁴

⁶ *Id.* at 404.

⁷ *American Eagle*, 343 F.3d at 404.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *American Eagle*, 343 F.3d at 404.

The CBA outlines specific procedures with respect to the grievance process.¹⁵ First, a pilot must initiate a grievance within 14 days of receiving written charges.¹⁶ Then, “a first-step hearing will be held at the pilot’s domicile within 14 days of the date written request is received.”¹⁷ Next, Eagle must issue an opinion on the matter within fourteen days of the hearing.¹⁸ Finally, if the pilot is unsatisfied, he may appeal to the Board within 30 days. However, the CBA also included a provision, 20(G)(2), stating the following: “If [American Eagle] fails to provide a written decision to the pilot . . . or hold a required hearing within the time limits specified, the pilot and the Association may consider the grievance denied.”¹⁹

Courts addressing arbitration awards arising out of CBAs consistently hold that courts “play only a limited role when asked to review the decision of an arbitrator.”²⁰ The parties to the CBA contract to settle disputes by binding arbitration rather than by the courts, and therefore, the parties agree to accept the factual findings of the arbitrator as well as the arbitrator’s interpretation of the CBA’s terms.²¹ In fact, the scope of the arbitrator’s authority under the CBA is also a mutually agreed upon term subject to interpretation by the arbitrator.²² As a result of this agreement between the parties, courts may not reject the arbitrator’s findings of fact or interpretations of the CBA simply because the court would have decided the matter differently.²³ Moreover, “so long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.”²⁴

However, the deference paid to the arbitrators is not without bounds. The arbitrator’s award must be drawn from the essence of the agreement between the parties.²⁵ The Fifth Circuit has defined this “essence” test to mean that the arbitrator’s award

¹⁵ *Id.* at 403.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Misco*, 484 U.S. at 36.

²¹ *Id.* at 37-38.

²² *W.R. Grace & Co. v. Local Union 759, Int’l Union of United Rubber, Cork, Linoleum & Plastic Workers of America*, 461 U.S. 757, 765 (1983).

²³ *Id.*

²⁴ *Misco*, 484 U.S. at 38.

²⁵ *United Steelworkers*, 363 U.S. at 597.

must be rationally inferable or obviously drawn from the letter or purpose of the CBA.²⁶ Only when an arbitrator “dispense[s] his own brand of industrial justice,” should a court refuse to enforce the award.²⁷ In reality, the bar set by case law for disturbing an arbitrator’s award is quite high.

In *American Eagle Airlines, Inc. v. Air Line Pilots Association*, the United States District Court for the Northern District of Texas held that the Board implicitly found just cause for termination,²⁸ and therefore, had stepped beyond its mandate in shaping an alternate remedy.²⁹ On appeal, the Fifth Circuit addressed two issues: 1) “whether the district court properly determined that the Board found that Balser’s conduct constituted ‘just cause’ for his termination,” and 2) “whether the arbitrator exceeded its jurisdiction by improperly interpreting the terms of the CBA.”³⁰ Ultimately, the Fifth Circuit answered both in the affirmative.

First, in its analysis, the court concluded that Eagle’s failure to hold a first-step hearing was not a violation of the CBA in light of provision 20(G)(2) which says, *inter alia*, that if Eagle fails to provide a required hearing, the pilot and ALPA may consider the grievance denied.³¹ The court, concurring with the district court’s interpretation, construed the provision to mean that by submitting the issue of termination to the Board, Balser and the ALPA accepted Eagle’s denial of the grievance and waived any right to claim a procedural default in the arbitration hearing.³²

Moreover, the appeals court agreed with the district court’s holding that the arbitrator had implicitly found just-cause. The court reasoned that while the arbitrator had not used the language “just-cause,” it did find that “Balser’s conduct was egregious and, therefore, must be removed from the workplace.”³³ Specifically, the court based its finding on the Board’s comment that Eagle “had not only a right but a duty to rid the workplace” of such harassment and on the Board’s finding that Balser’s carrying a dirk onboard the plane was a direct violation of Eagle’s

²⁶ *Houston Lighting & Power Co. v. Int’l Bhd. of Elec. Workers, Local Union No. 66*, 71 F.3d 179, 183 (5th Cir. 1995).

²⁷ *United Steelworkers*, 363 U.S. at 597.

²⁸ *American Eagle Airlines, Inc. v. Air Line Pilots Ass’n, Int’l*, 197 F. Supp. 2d 580, 585-86 (N.D. Tex. 2002).

²⁹ *Id.*, at 584 n.2.

³⁰ *American Eagle*, 343 F.3d at 406.

³¹ *Id.*

³² *Id.* at 406-07.

³³ *American Eagle*, 343 F.3d at 407.

rules.³⁴ Upon this finding of just cause, termination was the only outcome within the arbitrator's jurisdiction irrespective of any procedural default.³⁵

However, the Fifth Circuit concluded that even if a procedural default had occurred, the arbitrator could not consider this violation in the just-cause analysis. The court reasoned that since the alleged procedural default came after the acts for which Balser was terminated and after Eagle issued the termination notice, the arbitrator improperly considered Eagle's failure to hold the first-step hearing.³⁶ Under the court's logic, only pre-termination procedural defaults are properly considered in a just-cause determination.³⁷ Additionally, the court found that since the CBA requires only just-cause for termination and not just-cause plus a procedural default, once the arbitrator found just-cause, the arbitrator was bound to uphold the termination regardless of any post termination procedural violation.³⁸ The court emphasized that the Board acted beyond its jurisdiction by crafting a remedy other than termination.³⁹

Not surprisingly, the court's opinion drew dissent. Undoubtedly, the majority's analysis of the issues arrived at the correct conclusion under *their* interpretation of the CBA. However, as the United States Supreme Court has explained, the role of the district court in reviewing an arbitration award is not to sit as an appellate court would in review of factual and legal errors made by lower courts.⁴⁰ Here, the Fifth Circuit substituted their own interpretation of the CBA for that of the Board's. This is clear from the way the court chose to phrase the issues of the case. According to the court, the second issue was "whether the arbitrator exceeded its jurisdiction by improperly interpreting the terms of the CBA."⁴¹ Ironically, it was the district court that exceeded its jurisdiction by re-interpreting the CBA and finding that the Board had incorrectly done so. The district court's re-interpretation directly contradicts the policy reasons behind the extreme deference arbitration awards are afforded by the judicial system. The parties bargained freely for the terms set forth

³⁴ *Id.* at 409.

³⁵ *Id.* at 407.

³⁶ *Id.* at 408.

³⁷ *Id.* at 409.

³⁸ *Id.*

³⁹ *Id.* at 410.

⁴⁰ *Misco*, 484 U.S. at 38.

⁴¹ *American Eagle*, 343 F.3d at 406.

in the CBA, and in doing so, agreed to abide by the Board's factual and legal interpretation of the CBA. Interpretation of the agreement is the job of the arbitrator⁴² and not of the court. Only when the arbitrator's award fails to draw from the essences of the agreement may the court step in and refuse to enforce the award.⁴³

In this case, such measures were unnecessary and improper. The Board interpreted the CBA in a valid manner, and its award came directly from the essence of the agreement. The arbitrator interpreted provision 20(G)(2) as a next step for a pilot and the ALPA *should* a hearing be denied and *not* as a waiver of a remedy for a procedural violation by Eagle. As argued by Judge Dennis in his dissent, since provision 20(C) provided for a first-step hearing in mandatory language, the arbitrator's interpretation of provision 20(G)(2) was at least arguable.⁴⁴ Given that review of contractual interpretation was improper, the dissent correctly phrased the issues as "whether the arbitrator exceeded his authority in considering [Eagle's] breach of the [CBA] in determining whether the airline could terminate Balser."⁴⁵ Again, the Board interpreted the CBA as providing that just cause included Eagle's adherence to the proscribed grievance procedures.⁴⁶ Since the CBA does not define the term "just cause," the Board's interpretation is at least arguable. Therefore, the decision is not subject to judicial review.

In addition, the implicit finding of just-cause by the majority is intellectually dishonest. The Board did not mention just-cause, and a strong argument can be made that no just-cause was found. In the cases cited by the majority in which just-cause was found impliedly, the agreements defined just cause to include certain actions or offenses.⁴⁷ In the CBA between Eagle and the ALPA, however, the term just-cause was not defined, nor did the CBA list include actions and offenses that constitute just-cause.⁴⁸ Therefore, the Board's statement that Eagle "ha[d] not only the right, but the duty to rid the workplace of such conduct" did constitute just cause per se. As argued by Judge Dennis, many

⁴² *United Steelworkers*, 363 U.S. at 599.

⁴³ *Id.* at 597.

⁴⁴ *American Eagle*, 343 F.3d at 411-12.

⁴⁵ *Id.* at 412.

⁴⁶ *Id.* at 413.

⁴⁷ *Id.* at 414.

⁴⁸ *Id.*

steps short of termination could rid the workplace of such conduct.⁴⁹

Even if the Board's report could be read to imply just-cause, arbitrators are given latitude to fashion remedies as part of their jurisdiction in interpreting the CBA. The United States Supreme Court has recognized that when parties draft a collective bargaining agreement they may not envisage all possible scenarios for which remedies must be imposed.⁵⁰ Although some collective bargaining agreements may not provide explicitly for the arbitrator's remedial powers, the agreement must implicitly grant power to provide remedies.⁵¹ Therefore, as long as the Board imparts a remedy drawn from the essence of the agreement, the court should respect the parties' rights to contract and refuse to interfere with an arbitral award. Here, as advanced above, many remedies short of termination could rid the workplace of Balser's offensive behavior; and therefore, the Board operated within the power granted to it by the parties via the CBA in crafting an appropriate remedy.

The Board acted completely within its province in reinstating Balser. The courts have supported the use of arbitration for many socially beneficial reasons, not the least of which is the parties' freedom to contract and provide for their disputes to be handled through arbitrations. While arbitrators are not required to memorialize their decisions, they often do. If the courts continue to invade the province of the arbitrator, as was done here, it is possible that in the future, arbitrators will simply forgo writing their decisions in an effort to maintain independence from the judicial system that the parties specifically sought to avoid. Although arbitrators are not bound by precedent, it may be a useful tool for the parties involved in arbitration for purposes of assessing the merits of their case. It may also be a useful tool for arbitrators who are charged with interpreting the same or like CBAs. Therefore, the best interest of both sides of a dispute are served by the non-obligatory written decisions of the arbitrators.

⁴⁹ *American Eagle*, 343 F.3d at 414.

⁵⁰ *United Steelworkers*, 363 U.S. at 597.

⁵¹ *Miller Brewing v. Brewery Workers Local 9*, 739 F.2d 1159, 1163 (7th Cir. 1984).