

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

UNITED STEELWORKERS (USW), AFL-CIO)	S. Ct. Civ. No. 2019-0084
CLC LOCAL UNION 9489,)	Re: Super. Ct. Civ. No. 322/2017 (STX)
Appellant/Respondent,)	
)	
v.)	
)	
VIRGIN ISLANDS PORT AUTHORITY,)	
Appellee/Petitioner.)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Robert A. Molloy

Considered: December 14, 2021
Filed: June 16, 2022

Cite as: 2022 VI 13

BEFORE: **RHYS S. HODGE**, Chief Justice; **IVE ARLINGTON SWAN**, Associate Justice; and **JOMO MEADE**, Designated Justice.¹

APPEARANCES:

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¹ Associate Justice Maria M. Cabret is recused from this matter. The Honorable Jomo Meade, a judge of the Virgin Islands Superior Court, sits by designation pursuant to title 4, section 24 of the Virgin Islands Code.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 United Steelworkers Local 9489 (“USW”) appeals from the Superior Court’s October 2, 2019 opinion and order which vacated an arbitrator’s award in favor of one of its members. For the reasons that follow, we reverse the vacatur of the arbitration award and remand with instructions to reinstate the arbitrator’s May 5, 2017 award.

I. BACKGROUND

¶ 2 USW, the bargaining representative for supervisors and managers of the Virgin Islands Port Authority (“VIPA”), entered into a Collective Bargaining Agreement (“CBA”) with VIPA covering the period October 1, 2013, to September 30, 2018. As relevant here, the bargaining agreement contained provisions governing arbitration, a procedure for filing grievances, and a donated sick leave policy.

¶ 3 On March 22, 2014, Arthur Golden III, an Airport Operations Supervisor with VIPA, sent a Division of Personnel donated sick leave request form to the VIPA Director of Human Resources, the VIPA Executive Director, and his supervisor. Golden requested donated sick leave so that he could care for his mother during her serious illness. Golden’s Division of Personnel sick leave request form was never transmitted to the Director of Division Personnel (“DDP”) for approval, however. *Infra* n. 6.

¶ 4 Multiple government employees agreed to donate sick leave to Golden, including two of his sisters who worked for different government agencies. One sister filed her request to donate sick leave to Golden with the DDP, and emailed VIPA in an effort to expedite the approval process of donated leave from the other sister, who worked at the Governor Juan Luis Hospital. Milton Potter, the VIPA Human Resources Director, responded advising that the Division of Personnel

did not oversee leave processing for leave donors employed by the hospital and that “Juan Luis and the VIPA must coordinate this effort.” There is no evidence that the DDP ever acted on either sister’s request.

¶ 5 VIPA’s Executive Director denied Golden’s request to participate in the Donated Leave Program (“DLP”) on April 11, 2014 and granted him Family and Medical Leave Act (“FMLA”) leave instead. FMLA leave would allow Golden time off to care for his mother, but Golden would not get paid during that time and he would not accrue leave as he would have under the DLP. In addition, the FMLA leave would only commence after Golden had exhausted his accrued vacation and sick leave time.

¶ 6 On April 14, 2014, USW filed a grievance with VIPA on Golden’s behalf pursuant to the procedures dictated in the CBA. The grievance alleged that VIPA’s denial of Golden’s donated leave request violated federal laws, local laws, and the CBA. It also requested that Golden “be made whole.”² VIPA never responded to the grievance and otherwise failed to comply with a three-step grievance procedure set forth in the CBA.³ Consequently, on December 23, 2014, USW initiated arbitration proceedings pursuant to the CBA. Also, on December 23, 2014, Golden notified Potter that he had obtained an offer of donated leave from a fellow VIPA employee,

² The grievance report in the Joint Appendix lists the remedy requested as: “to be made whole.” The arbitrator’s report, however, says that USW requested “(1) full back pay with benefits to include annual and sick leave accrual and (2) comply with any other make whole relief the Arbitrator deems appropriate to restore the Grievant’s pay had the VIPA not denied him donated leave.”

³ As part of the grievance process, the CBA requires parties to undergo a three-step procedure. Step 3 requires a meeting between the Executive Director, the grievant, a union representative, and a grievance committee member.

“which can be used instead of the out[-]of[-]agency donated leave that was previously submitted” in order to “streamline the process for consideration of” his request to participate in the DLP.

¶ 7 On August 30, 2016, USW and VIPA selected Richard J. Miller as the arbitrator. The arbitrator held a hearing on March 3, 2017, where USW raised the question of arbitrability because of VIPA violations of the grievance procedure. The parties also addressed the merits of the grievance. The arbitration record was closed on April 19, 2017.

¶ 8 On May 5, 2017, the arbitrator issued a 30-page decision, ruling in favor of USW and against VIPA. The arbitrator determined that VIPA violated the CBA by failing to respond to the grievance and not complying with the three-step grievance procedure and held that USW was entitled to relief pursuant to language in Section 5:10 of the CBA providing that a grievance “shall be considered to have been settled in favor of the other party” in the event that a party fails to comply with the grievance procedure.⁴ The arbitrator determined that this entailed ordering VIPA to provide Golden with “full back pay with benefits [including] annual and sick leave accrual,” a value in excess of \$15,000.

¶ 9 Despite already ruling in USW’s favor due to VIPA’s failure to abide by the grievance

⁴ The full text reads:

Section 5:10 Time Limits

All time limits set forth in this Article may be extended by mutual agreement, but only in writing. Whenever used in this Article, the term “working day” means a calendar day Monday through Friday, exclusive of holidays. Answers and appeals submitted by the close (i.e., 5:00 p.m.) of the last work day in the period allowed in Section 5:3 and 5:4 shall be considered timely. Electronic Transmissions by fax will be acceptable means of delivering answers for Step 3 and appeal to arbitration between the parties as long as it is done within the time limits specified above. If the representatives of either party fail to observe or comply with any of the aforementioned time limits and such complaint, dispute and/or grievance shall be considered to have been settled in favor of the other party, except for good cause, shown by either party.

procedure in the CBA, the arbitrator also analyzed the merits of the grievance, presumably as an alternate ground to sustain the arbitration award. The arbitrator concluded that Golden was qualified to participate in the donated leave program, and that VIPA acted contrary to law and the CBA when it failed to act on his request and required him to take unpaid leave under the FMLA.

¶ 10 On August 1, 2017, VIPA filed with the Superior Court a motion requesting a declaratory judgment that it is not bound by the arbitrator's award and that the award be vacated. After considering the parties' briefs and holding a hearing, the Superior Court granted VIPA's motion in an October 2, 2019 opinion and order. *See V.I. Port Auth. v. United Steelworkers (USW)*, 71 V.I. 412 (V.I. Super. Ct. 2019). The Superior Court agreed with the arbitrator that VIPA had failed to comply with the grievance procedures of the CBA, and fully affirmed his application of Section 5:10. Nevertheless, the Superior Court disagreed with the arbitrator's construction of the donated leave provision of the CBA⁵ as well as the Virgin Islands statute establishing the donated leave program,⁶ and for this reason vacated the award on grounds that the arbitrator exceeded his

⁵ **Section 16:9 Donated Sick Leave**

Any Employee of the Government of the Virgin Islands, including employees of the Legislature, the Territorial Court, the University of the Virgin Islands, and all independent or semi-autonomous agencies and instrumentalities of the Government of the Virgin Islands, shall be eligible to receive donated sick or annual leave as set forth in Title 3, Chapter 25 § 583(b) of the Virgin Islands Code.

⁶ As relevant to this case, the Donated Leave Program statute reads as follows:

(b) The Director of the Division of Personnel shall administer the donated leave program of the Government of the Virgin Islands. The Director of the Division of Personnel, or his designee, shall promulgate rules and regulations necessary to implement the provisions this section and maintain appropriate records of donated leave for all employees of the Government of the Virgin Islands. All donated annual leave shall be calculated on the basis of the donor's salary, whichever is less.

(c) Any employee of the Government of the Virgin Islands may request that the Director of the Division of Personnel approve their participation in the program as

authority and acted in manifest disregard of the law in issuing the award. USW filed a timely notice of appeal with this Court on November 8, 2019. *See* V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 11 Pursuant to the Revised Organic Act of 1954, this Court has appellate jurisdiction over “all appeals from the decisions of the courts of the Virgin Islands established by local law[.]” 48 U.S.C. § 1613a(d). Furthermore, this Court has jurisdiction over “all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court.” 4 V.I.C. § 32(a). Because the Superior Court’s October 2, 2019 order vacating the arbitrator’s award resolved all the claims between the parties, this appeal is from a final judgment under Section 32(a) and this Court has jurisdiction over this appeal. *Gov’t of the V.I. v. St. Thomas/St. John Educ. Adm’rs Ass’n, Local 101 ex rel. Forde*, 67 V.I. 623, 627-28 (V.I. 2017) (“*Forde*”).

a leave recipient or as a leave donor. The employee's supervisor may make a request on behalf of the employee for their participation in the program as a leave recipient.

(1) The employee or supervisor requesting the employee's acceptance as a leave recipient shall submit to the Director of the Division of Personnel medical verification from a physician or other licensed health care provider concerning the nature and anticipated duration of the disability resulting from serious health condition or injury.

(2) The Director of Personnel shall approve a leave request within 10 business days after the leave donor has complied with the requirements in paragraph (1).

(3) When the Director of the Division of Personnel has approved an employee as a leave recipient, the Director of the Division of Personnel or the Director of the Department or Division where the employee works, or their designee, shall, with the employee's consent, post or circulate the employee's name along with those of other eligible employees in a conspicuous manner in the work place, to encourage the donation of leave time, and shall provide notice to the Department of Personnel of the employee donating leave.

3 V.I.C. § 583b.

¶ 12 This Court exercises plenary review over all questions of law, while the trial court’s findings of fact are reviewed for clear error. *St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007).

B. Vacatur of Arbitration Award

¶ 13 Because the CBA lacks a sufficient interstate nexus and the parties did not expressly incorporate any of the provisions of the Federal Arbitration Act, 9 U.S.C. §§ 1-16, into the CBA, Virgin Islands common law governs the extent to which the Superior Court may review a binding arbitration award. *Forde*, 67 V.I. at 627-28. As we have previously explained,

Under the common law, the Superior Court may only vacate an arbitrator’s award if: (1) the arbitrator exceeded his or her authority in rendering the award (which may include ignoring limits in the arbitration agreement itself on issues to be arbitrated or remedies the parties agreed to make available); (2) if the award was the product of fraud, partiality, or malfeasance on behalf of the parties or the arbitrator—or if the award was predicated upon a mistake flowing from such conduct; or (3) the arbitrator manifestly disregards the law.

Id. at 642. We adopted this highly-deferential standard because “the only common law bases for judicial review of a binding arbitration award can be those that facilitate—or at least do not impede—the intent of the parties,” *id.* at 638, and permitting a court to alter an arbitration award “based on its own notions of justice or sound public policy” would constitute “a judicial disregard for the parties’ chosen form of dispute resolution” and effectively deprive “parties who bargain for binding arbitration [from] receiv[ing] the benefit of their bargain.” *Id.* at 639-40 (collecting cases). Thus, even “a mistaken application of the law does not expose an award to judicial review.” *Id.* at 639.

¶ 14 In this case, the Superior Court not only failed to provide this deference to the arbitrator, but itself disregarded the CBA. As the arbitrator correctly recognized, the CBA requires the parties to engage in a three-step grievance process prior to arbitration, in accordance with specific

deadlines and time limits for each step. Section 5:10 of the CBA also provides an explicit remedy for when one party fails to abide by those time limits: “If the representatives of either party fail to observe or comply with any of the aforementioned time limits and such complaint, dispute and/or grievance shall be considered to have been settled in favor of the other party, except for good cause, shown by either party.” The arbitrator, having determined that VIPA had failed to abide by those time limitations, expressly invoked this forfeiture clause in his May 5, 2017 decision as the primary reason for ordering VIPA to provide Golden with full back pay and benefits. In fact, the Superior Court unequivocally affirmed the arbitrator’s application of Section 5:10, expressly holding that the arbitrator “carefully analyzed” the provision and “reached a decision that was rationally derived from the parties’ CBA,” ultimately concluding that it “sees no reasons to disturb the Arbitrator’s ruling in this regard” and that “this portion of the Arbitrator’s decision must be upheld.” 71 V.I. at 427. Moreover, even on appeal VIPA does not dispute or challenge any aspect of this ruling.

¶ 15 Because the Superior Court agreed that the arbitrator properly applied Section 5:10 of the CBA to award full back pay and benefits to Golden due to VIPA’s failure to abide by the time limitations for participating in the three-step grievance procedure, that should have been the end of the matter. While the arbitrator proceeded to then consider the merits of Golden’s entitlement to participate in the donated leave program, he clearly did so as an alternate ground to sustain the arbitration award. That the arbitrator exercised his discretion to do this is both understandable and commendable: by providing a ruling on the merits as an alternate ground to sustain the award, the arbitrator has eliminated the need for a remand to the arbitrator in the event a court were to hold that his interpretation or application of Section 5:10 was manifestly erroneous. By upholding the arbitrator’s decision to award full back pay and benefits to Golden under Section 5:10, yet

nevertheless vacating that very same award because it disagreed with the arbitrator's *alternate* ground for providing that same relief, the Superior Court exceeded its authority to review the award and in effect withheld a remedy expressly provided for in the CBA. Consequently, we reverse the October 2, 2019 opinion and order.⁷

III. CONCLUSION

¶ 16 The Superior Court failed to sufficiently defer to the arbitrator, in that it fully upheld the arbitrator's primary rationale for awarding full back pay and benefits to Golden but nevertheless vacated the May 5, 2017 arbitration award solely because it disagreed with the arbitrator's alternate ground for awarding the same remedy. Accordingly, we reverse the Superior Court's October 2, 2019 opinion and order, and remand with instructions to reinstate the May 5, 2017 award.

Dated this 16th day of June, 2022.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Reisha Corneiro
Deputy Clerk

Dated: June 16, 2022

⁷ Because we conclude that the Superior Court erred in vacating the arbitration award based on its disagreement with the arbitrator's alternate analysis of the merits despite having upheld the arbitrator granting the same relief under Section 5:10 of the CBA, we express no opinion as to whether the arbitrator manifestly disregarded the law or exceeded his authority when he held that VIPA violated Virgin Islands law and the CBA when it failed to grant his request to participate in the donated leave program.