

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000852-MR

FLOYD COUNTY BOARD OF EDUCATION

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT  
HONORABLE DANNY P. CAUDILL, JUDGE  
ACTION NO. 01-CI-00211

PATRICIA JULIAN, DENNIS HARRIS,  
AND UNITED STEELWORKERS OF  
AMERICA, AFL-CIO-CLC

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, McANULTY, and PAISLEY, JUDGES.

BUCKINGHAM, JUDGE: Patricia Julian was fired as a school bus driver for the Floyd County Board of Education. The matter was submitted to arbitration, and the arbitrator determined that Julian's discharge from employment was not for just or proper cause. The arbitrator thus awarded Julian reinstatement to her former position with full seniority and benefits. The school board filed a civil action in the Floyd Circuit Court to vacate

the arbitrator's award, but the circuit court awarded summary judgment in favor of Julian. We affirm the judgment.

Patricia Julian was employed as a bus driver by the Floyd County Board of Education for eight years beginning in 1992. The school board's bus drivers were covered under a collective bargaining agreement with United Steelworkers of America, AFL-CIO-CLC, Local 14636. On February 4, 2000, a snow storm struck Floyd County and forced the school system to release its students early. The events of that day led to Julian being discharged from her employment as a bus driver.

On the date in question, Julian was called in early to take students home. The procedure within the school system required teachers at the respective schools to ensure the students were loaded onto the correct bus. Josh Holbrook, age six, and his sister, Ashley Holbrook, age eight, were placed on Julian's bus by mistake. Although the children had ridden Julian's bus earlier in the year, their residence had changed the previous weekend and they had been moved to another bus route.

Norma Lewis, a friend and fellow bus driver of Julian, was engaged to be married to the Holbrook children's father. Lewis had previously mentioned the change in the children's residence to Julian. Nonetheless, Julian failed to realize that the children were on the wrong bus and instead drove them to

their previous stop. The children, having apparently failed to realize they were on the wrong bus, made no mention of that fact to Julian either when they boarded the bus or when they departed from it.

After letting the two Holbrook children off the bus, Julian continued with her normal route. When she reached west Prestonsburg, she suddenly realized that the children no longer lived at the address where they departed from the bus. Julian immediately made a radio call to the bus dispatcher, Debora Cecil, and asked her if she would contact Norma Lewis. Lewis and Julian talked directly with each other over the radio, and Lewis suggested that Julian immediately turn her bus around and go back to get the children. Julian declined to do so, but she did state that she would go back and pick them up once she completed her route. By this time, Lewis had already left her normal route and was headed to pick up the children.

The next day, Doug Holbrook, the children's father, reported the incident to the school system. His complaint was referred to Jody Sword, director of transportation for the school system. Sword conducted an investigation of the incident and recommended that Julian's employment be terminated. This recommendation was approved by Dr. Paul Fanning, school superintendent. Julian was discharged effective March 9, 2000.

In accordance with the collective bargaining agreement, Julian filed a grievance over the loss of her job. The matter was eventually submitted to an arbitrator for a decision. The arbitrator phrased the issue as, "Whether or not the Agency violated the collective bargaining agreement terminating the employment of Patricia Julian and if so, what shall the remedy be?"

After a hearing on September 15, 2000, the arbitrator rendered a decision in Julian's favor on January 12, 2001. The arbitrator determined that Julian was not discharged for just or proper cause and ordered Julian reinstated to her position with full seniority and benefits.<sup>1</sup> Further, the award directed the school board to pay Julian for all lost wages as a result of the discharge less any income she received from other sources. Following the arbitrator's decision, the school board filed an application to vacate the arbitration award in the Floyd Circuit Court.

On March 4, 2002, the circuit court rendered an order and judgment wherein it awarded Julian summary judgment. The court based its decision "on the fact that the Movant has failed to present sufficient evidence for the Court to conclude that there was fraud or any other misconduct committed by the

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<sup>1</sup> The collective bargaining agreement stated that just cause was required to discharge an employee.

Arbitrator." Further, the court stated that "even though there may be errors of fact or law, which the Court does not find here, an Arbitration Award must be affirmed." This appeal by the school board followed.

The school board filed its motion in the Floyd Circuit Court pursuant to KRS<sup>2</sup> 417.160 and KRS 417.190. Among other things, the motion to vacate the arbitrator's award alleged that the arbitrator exceeded his powers; that the award was procured by corruption, fraud, or other undue means; that there was evident partiality or corruption by the arbitrator prejudicing the rights of the school board; and that the arbitrator's award was not supported by substantial evidence and was contrary to the evidence and the law. Before discussing the particular issues in this case, we deem it appropriate to review the applicable law concerning arbitration.

In United Paperworkers Int'l Union, AFL-CIO, v. Misco, Inc., 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed. 286 (1987), the U.S. Supreme Court addressed general principles of law concerning the judicial review of an arbitrator's decision. The Court said:

The courts have jurisdiction to enforce collective-bargaining contracts; but where the contract provides grievance and arbitration procedures, those procedures must first be exhausted and courts must order resort to the private settlement mechanisms without dealing with the merits

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<sup>2</sup> Kentucky Revised Statutes.

of the dispute. Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept. Courts thus do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decision of lower courts. To resolve disputes about the application of a collective-bargaining agreement, an arbitrator must find facts and a court may not reject those findings simply because it disagrees with them.

484 U.S. 37-38. Noting that "the courts play only a limited role when asked to review the decision of an arbitrator," the Supreme Court also stated that "[t]he courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." Id. at 36. Further, the Court noted that courts in general "have no business weighing the merits of the grievance, considering whether there is equity in a particular claim." Id. at 37. However, the Court noted that "decisions procured by the parties through fraud or through the arbitrator's dishonesty need not be enforced." Id. at 38.

The Sixth Circuit Court of Appeals addressed the idea that an arbitrator's award need not be enforced when procured by fraud or dishonesty in Anderson, Inc. v. Horton Farms, Inc., 166 F.3d 308 (6<sup>th</sup> Cir. 1998). The court in that case noted, "evident partiality will be found only where a reasonable person would

have to conclude that an arbitrator was partial to one party to the arbitration." Id. at 327. The court went on to note, "[t]he alleged partiality must be direct, definite, and capable of demonstration." Id. at 329. Further, the court stated that "the party asserting evident partiality must establish specific facts that indicate improper motives on the part of the arbitrator." Id. The principles discussed in the Anderson case were reiterated by the Sixth Circuit Court of Appeals in Dawahare v. Spencer, 210 F.3d 666 (6<sup>th</sup> Cir. 2000).

Kentucky courts have a similar analysis of this issue. In Smith v. Hillerich & Bradsby Co., Inc., Ky., 253 S.W.2d 629 (1952), the court stated the general approach to this issue as follows:

The law favors and encourages the settlement of controversies by arbitration, and arbitrators are not expected or required to follow the strict rules of law, it being sufficient that they have due regard for natural justice. If the parties wanted exact justice administered according to the forms of law they should not have agreed to substitute a private forum for a court of law.

Id. at 630. Further, the court in Smith stated that arbitrator's awards may not be set aside "for mere errors of law or of fact." Id. The court went on to say, "[t]here must be a gross mistake of law or of fact constituting evidence of misconduct amounting to fraud or undue partiality in order to

impeach an award, and before a court can set aside an award, the evidence supporting the grounds of impeachment must be clear and strong." Id.

Later, in Taylor v. Fitz Coal Co., Inc., Ky., 618 S.W.2d 432 (1981), the Kentucky Supreme Court held that the scope of review by a court of an arbitrator's award was similar to that stated by the U.S. Supreme Court in Burchell v. March, 17 How. 344, 58 U.S. 344, 349, 15 L.Ed. 96 (1855), as follows:

"If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact. A contrary course would be a substitution of the judgment of the chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation."

618 S.W.2d at 433. The court further reiterated the rule in the Smith case that the award may be set aside if there was a "gross mistake of law or fact constituting evidence of misconduct amounting to fraud or undue partiality." Id., quoting Smith, supra.

The school board first argues that the circuit court erred as a matter of law in holding that it was required to prove fraud rather than applying a burden of providing evidence of gross mistakes of law or fact that would constitute fraud or undue partiality. In connection with this argument, the school

board asserts that the arbitrator made gross mistakes of fact in finding that Sword was the ultimate decision maker in the school board's decision to terminate Julian's employment and in refusing to weigh evidence of prior incidents and infractions committed by Julian. We agree with the trial court that the arbitrator did not err in these factual determinations and that, even if it did, the errors did not indicate misconduct by the arbitrator.

First, the school board argues that the arbitrator erroneously concluded that Sword, not Dr. Fanning, was the ultimate decision maker in the board's decision to terminate Julian's employment. This misstates the arbitrator's findings. The arbitrator specifically stated that Sword recommended termination and that the recommendation was approved by Dr. Fanning.

Second, the school board contends that the arbitrator ignored evidence that Julian was terminated based on this incident as well as "prior incidents and infractions." The problem with this argument, as pointed out by Julian in her brief, is that the arbitrator first determined that the school board "failed to carry its burden of proof" regarding this incident. Therefore, in the absence of the school board proving that Julian did what she was accused of doing, the fact that she may have had a prior incident or incidents became moot. In

short, we fail to see any gross mistake of law or fact committed by the arbitrator that would constitute evidence of misconduct amounting to fraud or undue partiality.

The school board's second argument is that the court erred in determining that the arbitration award should be affirmed even though there may have been errors of law or fact. We disagree. As we noted previously, "an arbitrator must find facts and a court may not reject those findings simply because it disagrees with them." Misco, 484 U.S. at 38. Rather, "[t]here must be a gross mistake of law or of fact constituting evidence of misconduct amounting to fraud or undue partiality." Smith, 253 S.W.2d at 630. The Kentucky Supreme Court in Carrs Fork Corp. v. Kodak Mining Co., Ky., 809 S.W.2d 699 (1991), referred to the common dictionary definition of "gross" as "immediately obvious or glaringly noticeable." No such error occurred in this case, and the circuit court properly awarded summary judgment to Julian.

The judgment of the Floyd Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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