

NEW YORK COURT OF APPEALS

Matter of Kowaleski v. New York State Department of Correctional Services

16 N.Y.3d 85 (2010) · Decided December 21, 2010

SUMMARY

The New York Court of Appeals held that an arbitrator exceeded a specifically enumerated limitation on his power by refusing to consider and determine an employee's retaliation defense under Civil Service Law § 75-b. Because the arbitrator failed to separately determine whether the disciplinary action was retaliatory, the court vacated the arbitration award and remitted the matter for further proceedings. The court explained that a disciplinary action may be retaliatory even if the employee committed the alleged misconduct.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Ciparick, J.; Chief Judge Lippman; Judge Graffeo; Judge Read; Judge Smith; Judge Pigott; Judge Jones
JURISDICTION	New York
DECIDED	December 21, 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal as of right from an Appellate Division order affirming Supreme Court's refusal to vacate an arbitration award under CPLR 7511.
STANDARD OF REVIEW	An arbitration award may be vacated under CPLR 7511(b)(1)(iii) when the arbitrator exceeded the specifically enumerated limitations on his or her power. Outside narrowly circumscribed exceptions, courts may not review an arbitrator's legal or factual errors.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals.
PARTIES	Barbara Kowaleski v. New York State Department of Correctional Services

TOPICS

whistleblower

employment arbitration

statutory interpretation

appellate procedure

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PRACTICE AREAS

employment law

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arbitration

QUESTIONS PRESENTED

1. Whether an arbitrator was required under Civil Service Law § 75-b to consider and determine on the merits an employee's affirmative defense that disciplinary action was retaliatory for whistleblowing.
2. Whether the arbitrator's failure to separately consider the retaliation defense constituted an excess of power requiring vacatur of the arbitration award under CPLR 7511(b)(1)(iii).
3. Whether consideration of retaliation evidence in assessing witness credibility and guilt was sufficient to satisfy Civil Service Law § 75-b.

HOLDINGS

1. When an employee raises a Civil Service Law § 75-b retaliation defense in arbitration, the arbitrator must consider and determine the merits of that defense as part of the arbitration award, regardless of contrary limitations in the collective bargaining agreement.
2. The arbitrator exceeded a specifically enumerated limitation on his power by refusing to consider and determine Kowaleski's retaliation defense, requiring vacatur of the award under CPLR 7511(b)(1)(iii).
3. It was insufficient for the arbitrator merely to consider retaliation evidence in evaluating witness credibility and determining guilt; section 75-b required a separate determination of whether the disciplinary action was based solely on retaliatory motive.

KEY QUOTATIONS

“In short, the statute requires the arbitrator to consider and determine the merits of an employee’s retaliation defense where such a defense is raised” (91)

“A disciplinary action may be retaliatory even where an employee is guilty of the alleged infraction.” (92)

“This separate retaliation inquiry is critical.” (92)

FACTUAL BACKGROUND

Barbara Kowaleski, a correction officer employed by the New York State Department of Correctional Services, was charged with three disciplinary violations arising from events in September and October 2004. She asserted that the disciplinary action was retaliation for reporting a fellow officer's misconduct in 2002. The arbitrator found her guilty of two charges and upheld termination, but refused to separately consider the retaliation defense on the merits, reasoning that the collective bargaining agreement limited his authority to determining guilt, innocence, and the appropriateness of the penalty.

PROCEDURAL HISTORY

DOCS charged Kowaleski with three disciplinary violations and sought her termination. After an arbitration hearing, the arbitrator found her guilty of two charges and upheld discharge, declining to consider her Civil Service Law § 75-b retaliation defense as an affirmative defense. Supreme Court found that the arbitrator

exceeded his power but declined to vacate the award, and the Appellate Division affirmed. The New York Court of Appeals reversed, vacated the award, and remitted the matter to Supreme Court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the arbitration award and remit the matter to Supreme Court for further proceedings consistent with the opinion, including discretionary consideration of whether any rehearing should be conducted before a different arbitrator.

CASES CITED

- Matter of Kowaleski [New York State Department of Correctional Services], 61 A.D.3d 1081 (3d Dep't 2009)
- Matter of New York City Transit Authority v. Transport Workers' Union of America, Local 100, AFL-CIO, 6 N.Y.3d 332, 336 (2005)
- Matter of Falzone v. New York Central Mutual Fire Insurance Co., 15 N.Y.3d 530, 534 (2010)
- Matter of Obot [New York State Department of Correctional Services], 89 N.Y.2d 883, 885-886 (1996)

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