

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Brooks v. Cintas Corp.

91 F. App'x 917 (5th Cir. 2004) · No. 03-20719 · Decided January 12, 2004

SUMMARY

The Fifth Circuit affirmed orders compelling arbitration and denying reconsideration of an arbitration award in Nicholas Brooks’s Title VII race-discrimination and retaliation action against Cintas Corporation. The court held that Brooks’s alleged failure by Cintas to confer or mediate did not waive the arbitration provision and that the arbitrator’s credibility determinations did not establish partiality, corruption, or another permissible basis for vacatur. The opinion is unpublished and nonprecedential under Fifth Circuit Rule 47.5, subject to limited exceptions.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per curiam; Jones; Benavides; Clement
JURISDICTION	Federal
DECIDED	January 12, 2004
DOCKET	03-20719
DISPOSITION	affirmed
PROCEDURAL POSTURE	Brooks appealed the district court's order compelling arbitration and staying and administratively closing his Title VII discrimination and retaliation action, as well as its denial of his motion to reconsider the arbitrator's award of no damages.
STANDARD OF REVIEW	The decision to compel arbitration and the decision to vacate or confirm an arbitration award are reviewed de novo. Judicial review of an arbitration award is extraordinarily narrow; legal or factual error alone is insufficient to vacate an award.
PRECEDENTIAL VALUE	Unpublished and nonprecedential under 5th Cir. R. 47.5, except under the limited circumstances specified by that rule.
PARTIES	Nicholas D. Brooks v. Cintas Corporation

TOPICS

- employment arbitration
- employment discrimination
- title vii
- standard of review
- appellate procedure

PRACTICE AREAS

employment law

employment arbitration

employment discrimination

civil rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court properly compelled arbitration despite Cintas's alleged refusal to confer or participate in mediation.
2. Whether the arbitrator's alleged failure to credit Brooks's evidence demonstrated partiality or another legally sufficient basis to vacate the arbitration award.
3. Whether the district court properly denied Brooks's motion to reopen the administratively closed case and reconsider the arbitration award.

HOLDINGS

1. The district court properly compelled arbitration because Brooks conceded that he agreed to arbitrate the dispute, and Cintas's alleged refusal to confer or mediate was at most a breach of the employment agreement that did not constitute an external legal constraint barring arbitration.
2. The district court properly refused to vacate or reconsider the arbitration award because Brooks failed to show arbitrator partiality or corruption, and an arbitrator's decision not to credit evidence is not independently reviewable.

KEY QUOTATIONS

“Review of an arbitration award is “extraordinarily narrow.”” (at 4)

“A court may not reverse based solely on legal or factual error.” (at 4)

“His decision not to credit that evidence is not reviewable.” (at 4)

FACTUAL BACKGROUND

Cintas hired Brooks in 1995 and promoted him in 2001 to Service Sales Representative. After management discovered that Brooks had charged a customer for undelivered goods and services and had obtained unauthorized invoice signatures, Brooks complained that he had been denied a commission given to a white employee. Cintas terminated him two days later, and an arbitrator determined that the termination resulted from poor service and improper invoicing rather than racial motivation.

PROCEDURAL HISTORY

Brooks sued Cintas in the United States District Court for the Southern District of Texas, alleging race discrimination and retaliation under Title VII. The district court compelled arbitration, stayed and administratively closed the case, and later denied Brooks's motion to reopen the case and reconsider the arbitrator's no-damages award. The Fifth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- American Heritage Life Insurance Co. v. Orr, 294 F.3d 702, 707-08 (5th Cir. 2002)
- Catholic Diocese of Brownsville v. A.G. Edwards & Sons, Inc., 919 F.2d 1054, 1056 (5th Cir. 1990)
- Prestige Ford v. Ford Dealer Computer Services, Inc., 324 F.3d 391, 393 (5th Cir. 2003)
- OPE International LP v. Chet Morrison Contractors, Inc., 258 F.3d 443, 445 (5th Cir. 2001)
- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983)
- Gateway Technologies, Inc. v. MCI Telecommunications Corp., 64 F.3d 993, 996 (5th Cir. 1995)
- United Paperworkers International Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987)
- Prestige Ford v. Ford Dealer Computer Services, Inc., 324 F.3d 391, 395 (5th Cir. 2003)
- Harris v. Parker College of Chiropractic, 286 F.3d 790, 792 (5th Cir. 2002)

OPINION

PER CURIAM.

United States Court of Appeals Fifth Circuit F I L E D IN THE UNITED STATES COURT OF APPEALS January 12, 2004 FOR THE FIFTH CIRCUIT Charles R. Fulbruge III Clerk No. 03-20719 Summary Calendar NICHOLAS D. BROOKS, Plaintiff-Appellant, versus CINTAS CORPORATION Defendant-Appellee. Appeal from the United States District Court for the Southern District of Texas USDC No. H-02-CV-2736 Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:* Nicholas Brooks appeals from two district court orders. The first stayed and administratively closed his employment discrimination case against Cintas Corporation pending arbitration, and the second denied his motion to reconsider the arbitrator's award of no damages. Cintas hired Brooks in 1995.

On August 19, 1999, in connection with a promotion, Brooks signed an employment * Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4. No. 03-20719 -2- agreement with Cintas that compelled, in the event of an employment dispute, a good faith attempt at resolution by conference followed by binding arbitration.

Brooks was promoted in March, 2001 to Service Sales Representative (SSR). As an SSR, Brooks delivered bathroom supplies and floor mats to Cintas customers. Cintas management discovered in June that Brooks charged one of Cintas's customers for goods and services he did not deliver and

that he regularly obtained invoice signatures from unauthorized customer representatives or even signed invoices himself.

Brooks demonstrated that these were common practices of Cintas SSRs, who often were sent to customers with insufficient supplies, were not given enough time to perform all requested services, and worked at hours when authorized representatives were often unavailable. Several days after Cintas's discovery of Brooks's poor performance and unauthorized signatures, Brooks complained to Cintas management that he was due a commission that had been given to a white employee.

Two days later, Cintas fired Brooks. Brooks was replaced by an African-American man. Brooks filed a race-discrimination complaint with the Equal Employment Opportunity Commission. The EEOC invited Brooks and Cintas to participate in an EEOC-sponsored mediation, but Cintas declined. Brooks filed suit in the district court, alleging that Cintas discriminated against him based on race and retaliated against him for demanding a commission in violation of Title VII No. 03-20719 -3- of the Civil Rights Act of 1964.

The district court stayed the case pending arbitration and administratively closed the case. At arbitration, several former and current Cintas employees testified that Cintas supervisors told racial jokes. One witness testified that Brooks's supervisor was a racist and made racist jokes.

After a two-day hearing, the arbitrator determined that "Brooks was fired because of poor service and improper invoicing procedures. Cintas's decision to fire him, and not to fire other employees, appears to have been a purely business decision, devoid of racial undertones or motivation." The court denied Brooks's motion to open the administratively closed case.

We have jurisdiction, as the district court ordered arbitration, closed the case, and denied the motion to review the arbitration award. See *American Heritage Life Ins. Co. v. Orr*, 294 F.3d 702, 707-08 (5th Cir. 2002) (holding that where a district court compels arbitration, stays proceedings, and closes a case or where it decides the merits and retains jurisdiction only to enforce an arbitration award, the order is a final, appealable judgment).

Review of the decision to compel arbitration is de novo. *Catholic Diocese of Brownsville v. A.G. Edwards & Sons, Inc.*, 919 F.2d 1054, 1056 (5th Cir. 1990). Review of the decision to vacate or confirm an arbitration award is also de novo. *Prestige No. 03-20719 -4- Ford v. Ford Dealer Computer Svcs., Inc.*, 324 F.3d 391, 393 (5th Cir. 2003).

To decide whether to compel arbitration, a district court must first determine if the parties agreed to arbitrate the dispute in question. *OPE Int'l LP v. Chet Morrison Contractors, Inc.*, 258 F.3d 443, 445 (5th Cir. 2001). Next a court must examine "whether legal constraints external to the parties' agreement foreclose[] the arbitration of those claims." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985).

Brooks concedes on appeal that he agreed to arbitrate the dispute in question. He argues, though, that Cintas's refusal to confer with him or mediate the dispute constituted a waiver of the arbitration provision. Cintas's alleged refusal would have been a breach of the employment agreement, which should have been presented to the arbitrator even if it amounted to waiver.

See *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983) ("any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability"). Furthermore, Cintas's breach would not have been a "legal constraint[] external to the parties' agreement," so it would not have barred arbitration.

The district court did not err in compelling arbitration. No. 03-20719 -5- Brooks argues the arbitrator was biased because he did not consider evidence that would have supported Brooks's claims. Review of an arbitration award is "extraordinarily narrow." *Gateway Tech.s, Inc. v. MCI Telecomm.s Corp.*, 64 F.3d 993, 996 (5th Cir. 1995). A court may vacate an award if there is evidence of partiality or corruption by the arbitrator.

9 U.S.C. § 10(a)(2). A court may not reverse based solely on legal or factual error.¹ *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38 (1987). Arbitrators must give each party an adequate opportunity to present evidence and arguments, but they need not hear all of the evidence tendered by the parties. *Prestige Ford*, 324 F.3d at 395.

Here the arbitrator heard Brooks's evidence and mentioned it in his recitation of facts. His decision not to credit that evidence is not reviewable. Brooks has not shown partiality or corruption. The district court did not err in denying Brooks's motion to reopen the case to reconsider the arbitration award. AFFIRMED. 1 The only other grounds on which a district court may vacate an arbitrator's award are the following: the award was procured by corruption, fraud, or undue means; the arbitrator was guilty of misconduct; the arbitrator exceeded his powers; or the arbitrator acted with manifest disregard for the law.

See *id.*; *Harris v. Parker College of Chiropractic*, 286 F.3d 790, 792 (5th Cir. 2002).