

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Cedar Fair, L.P.

Court of Appeals No. E-12-015

Appellee/Cross-Appellant

Trial Court Nos. 2011-CV-0217
2011-CV-0218

v.

Jacob Falfas

DECISION AND JUDGMENT

Appellant/Cross-Appellee

Decided: April 19, 2013

* * * * *

Dennis E. Murray, Jr., Dennis E. Murray, Sr., Susan C. Hastings
and Joseph C. Weinstein, for appellee/cross-appellant.

Richard D. Panza, William F. Kolis, Jr. and Joseph E. Cirigliano,
for appellant/cross-appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal and cross-appeal from a judgment of the Erie County Court of Common Pleas that vacated in part an arbitration award that ordered appellant Jacob Falfas reinstated with back pay as chief operating officer of appellee, Cedar Fair, L.P.

For the reasons set forth below, the judgment of the trial court is affirmed in part and reversed in part.

{¶ 2} Appellant/cross-appellee (“appellant”) was employed by appellee/cross-appellant (“appellee”) for 39 years. On June 20, 2007, appellant was promoted to appellee’s chief operating officer, subject to the terms of an employment agreement which would expire on November 30, 2012. On or about June 10, 2010, after a brief telephone conversation with Richard Kinzel, appellee’s chief executive officer, appellant’s employment with appellee came to an immediate end. The parties had differing interpretations of the effect of the telephone conversation, with appellee claiming appellant resigned and appellant claiming he was terminated.

{¶ 3} The relevant employment agreement into which appellant and appellee entered contains a mandatory, final and binding arbitration provision. Pursuant to that provision, the parties arbitrated their dispute. On February 28, 2011, the arbitration panel issued its award finding that appellant “was terminated for reasons other than cause” and that “the facts fail to establish resignation.” In addition, the panel found that “equitable relief was needed to restore the parties to the positions they held prior to the breach” of the employment agreement by appellee. The panel directed that appellant be reinstated to his former position with back pay and all other benefits to which he was entitled under the employment agreement.

{¶ 4} On March 21, 2011, appellee filed an action to vacate, modify or correct the arbitration award. On March 22, 2011, appellant filed a separate action to confirm the award. The two actions were consolidated in the trial court.

{¶ 5} On February 22, 2012, the trial court confirmed the award as it related to the award of back pay, benefits, reasonable costs, expenses and attorney fees, but also modified the award in part by determining that appellant should not be reinstated to his position. Appellant filed a timely appeal, which was followed by appellee's cross-appeal.

{¶ 6} Appellant sets forth the following assignments of error:

1. The trial court erred as a matter of law when it vacated that portion of the award ordering reinstatement of appellant/cross-appellee Jacob Falfas as being in excess of the arbitrators' authority because such relief was not available under Ohio law absent statutory authority.

2. The trial court erred as a matter of law in not remanding the case to the arbitrators for a determination of the exact amount of back pay and benefits, and reasonable costs, expenses and attorneys' fees to which appellant/cross-appellee Jacob Falfas was entitled as a result of appellee/cross-appellant Cedar Fair L.P.'s breach of contract.

{¶ 7} Appellee sets forth the following single cross-assignment of error:

The trial court erred as a matter of law in affirming an arbitration award that conflicted with the express and unambiguous terms of the employment agreement.

{¶ 8} Like court decisions, arbitration awards are presumptively valid. *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.*, 49 Ohio St.3d 129, 551 N.E.2d 186 (1990). Judicial review of arbitration awards is limited in order to encourage parties to resolve disputes through arbitration. *Kelm v. Kelm*, 68 Ohio St.3d 26, 27, 623 N.E.2d 39 (1993). Once arbitration has taken place, a trial court has no jurisdiction except to confirm, vacate, modify or enforce the award pursuant to statute. The trial court may not consider the merits or substantive aspects of the arbitration award. *Piqua v. Fraternal Order of Police*, 185 Ohio App.3d 496, 2009-Ohio-6591, 924 N.E.2d 876 (2d Dist.). That is, the trial court must not review whether the arbitrators made factual or legal errors. “In reviewing an arbitrator’s award, the court must distinguish between an arbitrator’s act in excess of his powers and an error merely in the way the arbitrator executed his powers. The former is grounds to vacate, the latter is not.” *Id.* at ¶ 18.

{¶ 9} R.C. 2711.10 sets forth the statutory grounds under which a trial court may vacate or modify an arbitration award. The trial court in this case determined that the only arguable basis herein was R.C. 2711.10(D), which authorizes disturbing an arbitration award if the arbitrators exceeded the powers conferred upon them by the arbitration agreement. The court found that the arbitrators in this matter had in fact exceeded their powers by reinstating appellant to his former position, and vacated that portion of the award.

{¶ 10} It is well-settled that, absent evidence of material mistake or extensive impropriety, an appellate court cannot extend its review to the substantive merits of the

arbitration award but is limited to a review of the trial court's order. *Cooper v. Secs. Serv., Inc.*, 6th Dist. No. L-09-1127, 2010-Ohio-463, ¶ 11. The standard of review on appeal is whether the trial court erred as a matter of law. *Union Twp. Bd. of Trustees v. Fraternal Order of Police, Ohio Valley Lodge No. 112*, 146 Ohio App.3d 456, 766 N.E.2d 1027 (12th Dist. 2001).

{¶ 11} We note that the trial court herein rejected appellee's claim that the arbitrators exceeded their authority in ordering reinstatement because it conflicts with the express terms of the employment as well as appellee's argument that the order of reinstatement violates public policy. Instead, the trial court cited Section 19 of the employment agreement, which states at paragraph (c) that "[t]he arbitration panel shall have authority to award any remedy or relief that an Ohio or federal court in Ohio could grant in conformity with applicable law on the basis of the claims actually made in the arbitration." Appellee, in support of its motion to vacate the arbitrators' decision, claimed that the award was beyond the scope of authority of Section 19(c).

{¶ 12} The trial court found that the arbitrators exceeded their authority because reinstatement is not a remedy for a personal services contract. In support, the trial court cited *Masetta v. National Bronze & Aluminum Foundry Co.*, 159 Ohio St. 306, 112 N.E.2d 15 (1953). *Masetta*, however, is inapposite to the case before us. *Masetta* is limited to cases seeking class-wide injunctive relief based upon a collectively bargained contract as can be seen from paragraph one of the syllabus: "1. A court of equity will not in a class action, by means of mandatory injunction, decree specific performance of

an employment contract negotiated between an employer and a union representing its employees, where the issue involves the respective rights of seniority of the employees.”

{¶ 13} The arguments made by appellee and relied upon by the trial court as a basis for vacating the arbitration award ignores Ohio case law precedent as set forth in *Worrell v. Multipress, Inc.*, 45 Ohio St.3d 241, 533 N.E.2d 1277 (1989) and *Collini v. Cincinnati*, 87 Ohio App.3d 553, 622 N.E.2d 724 (1st Dist.1993). In *Worrell*, addressing the details of a breach of employment contract claim, including whether a financial award was considered front pay or back pay, the Ohio Supreme Court stated that “in [certain] circumstances an award of front pay enables the court to make the injured party whole, *although reinstatement is the preferred remedy.*” *Worrell* at 246. (Emphasis added.) Clearly, in *Worrell*, the Supreme Court recognized that reinstatement is not only an available remedy, it is the “preferred remedy.” A similar conclusion was reached in *Collini, supra*, wherein the court cited *Worrell* and stated that “[i]n employment disputes specifically, the court may make equitable remedies to make the injured party whole. For example, the Supreme Court of Ohio expressly held that * * * when a corporation wrongfully discharged an employee, *reinstatement and ‘front pay’ were proper remedies available to the court. See generally, Worrell v. Multipress, Inc. * * *.*” (Emphasis added.) *Collini* at 557.

{¶ 14} Considering such precedent, the trial court’s finding that the arbitrators’ decision “[f]lies in the face of clearly established legal precedent” or otherwise exhibited

a “manifest disregard” for the law in granting reinstatement to appellant is without merit and wrong as a matter of law.

{¶ 15} Based on the foregoing, we find appellant’s first assignment of error well-taken.

{¶ 16} In his second assignment of error, appellant asserts that the trial court erred by not remanding the case to arbitration for a determination of the exact amount of back pay, benefits, costs, expenses and attorneys’ fees to which he is entitled. Appellant asserts that a remand to arbitration is required because the trial court’s judgment entry does not quantify the award of damages. We note, however, that the arbitrators clearly stayed silent on the issue of exact amounts to be awarded appellant, leaving that determination for the trial court. Likewise, this court finds that the trial court is best situated to resolve this issue and, accordingly, this matter is remanded to that court for further hearing on “back pay and other benefits he enjoyed under the 2007 Amended Restated Employment Agreement as if the employment relationship had not been severed” as well as “any reasonable costs, expenses and attorney’s fees incurred by him * * *,” to which he is entitled pursuant to the trial court’s order. Accordingly, appellant’s second assignment of error is not well-taken as to his argument that this matter should be remanded to arbitration for resolution of the amounts awarded.

{¶ 17} In support of its cross-appeal, appellee asserts that the arbitration award conflicted with the express and unambiguous terms of the employment agreement. Once the parties have authorized an arbitrator to give meaning to the language of an agreement,

a court should not reject an award on the ground that the arbitrators misread the contract. *Stow Firefighters v. City of Stow*, 193 Ohio App.3d 148, 2011-Ohio-1559, 951 N.E.2d 152 (9th Dist.) Appellee suggests that the trial court should have vacated the award on that basis. “Contracting parties who agree to submit disputes to an arbitrator for final decision have chosen to bypass the normal litigation process. If parties cannot rely on the arbitrator’s decision (if a court may overrule that decision because it perceives factual or legal error in the decision), the parties have lost the benefit of their bargain.” *Id.* at ¶ 24, citing *Automated Tracking Sys. Inc. v. Great Am. Ins. Co.*, 130 Ohio App.3d 238, 243, 719 N.E.2d 1036 (9th Dist.1998).

{¶ 18} Based on the foregoing, appellee’s cross-assignment of error is not well-taken.

{¶ 19} On consideration whereof, the judgment of the Erie County Court of Common Pleas is reversed as to its modification of the arbitrators’ award reinstating appellant’s employment, and affirmed as to its order regarding appellant’s back pay and other benefits, reasonable costs, expenses and attorney fees. This matter is remanded to the trial court for further proceedings consistent with this decision. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

Judgment reversed in part
and affirmed in part.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.