

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

_____)
CENTURY DRYWALL, INC.,)
)
Plaintiff,)
)
v.) C.A. No. 08-221 S
)
RHODE ISLAND LABORERS' DISTRICT)
COUNCIL, ON BEHALF OF ITS LOCAL)
UNION 271,)
)
Defendant.)
_____)

MEMORANDUM AND ORDER

WILLIAM E. SMITH, United States District Judge.

Century Drywall, Inc. (Century) brought suit under the Labor Management Relations Act to vacate an arbitration award on the grounds that the arbitrator exceeded his authority and failed to decide the specific issue presented. Rhode Island Laborers' District Council, on behalf of its Local Union 271 (Laborers), objected and moved to confirm the award. For the reasons set forth below, the Laborers' motion to confirm is granted.

I. Background

Century is a Rhode Island construction contractor. It has collective bargaining agreements with two unions relevant to this dispute: the Laborers, and the International Brotherhood of Carpenters and Joiners of America Local 94 (Carpenters). Century subcontracted installation of ceiling tile work to a corporation that had a collective bargaining agreement with the Carpenters but

not the Laborers. When that subcontractor assigned the work of unloading the tiles to the Carpenters, the Laborers filed a grievance against Century for violating a subcontracting clause in the Century/Laborers collective bargaining agreement (CBA). In short, the Laborers lay claim to the unloading of ceiling tiles; Century's position was that its subcontractor properly assigned the work to the Carpenters and it would not direct otherwise.

In April of 2008, Century and the Laborers submitted the dispute to arbitration, agreeing to tee up three questions: 1) is the grievance arbitrable; 2) if so, did Century violate the CBA when, through its subcontractor, it assigned the work of unloading the tile to the Carpenters; and 3) if so, what shall the remedy be? The arbitrator deemed the grievance arbitrable, decided it was "upheld in part" and awarded that "[t]he work of unloading acoustical tiles shall be performed by a composite crew of equal numbers of Carpenters and Laborers." (Doc. 14 ex. 2.)

II. Discussion

In the usual course, labor arbitration awards are "nearly impervious to judicial oversight." E. Seaboard Constr. Co. v. Gray Constr., Inc., 553 F.3d 1, 3 (1st Cir. 2008). There are a handful of narrow exceptions to the rule but a party challenging an award "must be prepared to undertake a steep uphill climb." Mercy Hosp., Inc. v. Mass. Nurses Ass'n, 429 F.3d 338, 343 (1st Cir. 2005); see Cytyc Corp. v. DEKA Prods. Ltd. P'ship, 439 F.3d 27, 29 (1st Cir.

2006) ("review of arbitration awards is extremely narrow"); Bettencourt v. Boston Edison Co., 560 F.2d 1045, 1048 (1st Cir. 1977); Hollern v. Wachovia Sec., Inc., 458 F.3d 1169, 1172 (10th Cir. 2006) (court gives "extreme deference"). While an arbitrator has broad authority to fashion remedies, he has no power to decide questions the parties have not empowered him to resolve. See United Steelworkers of Am. v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597-98 (1960); 9 U.S.C. § 10(a)(4). An award may be overturned if it is "unfounded in reason and fact, is based on reasoning so palpably faulty that no judge . . . could ever conceivably have made such a ruling." Bettencourt, 560 F.2d at 1050 (internal citation omitted). Otherwise, it must be upheld so long as it draws its essence from the agreement and does not dispense the arbitrator's "own brand of industrial justice." Mercy Hospital, 429 F.3d at 343 (quoting Enterprise, 363 U.S. at 597).

The crux of Century's challenge is that the award here is imperfect because the arbitrator never actually stated whether Century violated the CBA. Under the narrow standard of review this argument must be rejected. Century overlooks that the award specifically upholds the Laborers' grievance "in part." The only reasonable inference that follows from that statement is that the arbitrator did indeed find a violation. If that were not the case, surely no remedy would have been provided. The arbitrator's discussion reflects proper consideration of the CBA and the

exhibits and testimony offered -- the fact that this Court may disagree or Century may prefer more detail is irrelevant. See United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987) (so long as arbitrator is "even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision"); Garvey v. Roberts, 203 F.3d 580, 589 (9th Cir. 2000) ("[A]mbiguity in an opinion that accompanies an award, or a lack of any real opinion at all, is not sufficient to permit an inference that the arbitrator exceeded his authority.").

Also unavailing is Century's contention that it was inappropriate for the arbitrator to consider the Carpenters or order a composite crew. The parties specifically included the Carpenters in the issues and evidence presented to the arbitrator. The exhibit list reveals a handful of documents related to the Carpenters, including their agreement with Century that also claimed the tile work. Moreover, the decision reveals Century itself cited instances in which the Carpenters performed the work to support its position that there was no violation of the Laborers' CBA. In short, the discussion, award and remedy recognize that the evidence and argument brought into play Century's relationship with a different union and two competing agreements. It was not "palpably faulty" for the arbitrator to

consider both, set forth his reasons, uphold the grievance in part and, as requested, fashion a reasonable remedy. Bettencourt, 560 F.2d at 1050. Now dissatisfied, Century falls short of its high burden to show the decision is fatally ambiguous or reveals an abuse of authority because of the less-than-explicit finding of a violation.

Given this analysis, the Laborers' proposed alternative of remand is unnecessary. The award needs no clarification. Sending this issue back to the arbitrator would do nothing but turn back the clock and (needlessly) reopen the merits.

III. Conclusion

For the foregoing reasons, Century's motion to vacate is DENIED and Rhode Island Laborers District Council Local 271's motion to confirm is GRANTED. JUDGMENT shall enter in favor of Rhode Island Laborers District Council in accordance with the terms of the May 5, 2008 arbitration award.

IT IS SO ORDERED.

William E. Smith
United States District Judge
Date: