

STATE OF MICHIGAN
COURT OF APPEALS

CURTIS MUSIALOWSKI,

Plaintiff-Appellant,

v

GENERAL DYNAMICS CORPORATION,

Defendant-Appellee.

UNPUBLISHED

April 15, 1997

No. 193041

Macomb Circuit Court

LC No. 94-000271-CZ

Before: Holbrook, Jr., P.J., Fitzgerald and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order confirming an arbitration award and entering a judgment of no cause of action for defendant. We affirm.

Plaintiff first argues that the arbitration award should be vacated because the arbitrator applied incorrect principles of law. However, plaintiff neither raised this issue in the trial court nor did he raise it within twenty-one days of the arbitration award as required by MCR 3.602(J). Generally, an issue not raised before and considered by the trial court is not preserved for appellate review. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1993). In any event, the arbitrator made no errors of law when he required plaintiff, who was laid off during a reduction in force, to demonstrate that age was a determining factor in his discharge as part of the prima facie case and to demonstrate that his skills were comparable to those of the younger employee who was actually retained during the reduction in force. *Matras v Amoco Oil Co*, 424 Mich 675, 684; 385 NW2d 586 (1986); *Foehr v Republic Automotive Parts, Inc*, 212 Mich App 663, 671; 538 NW2d 420 (1995); *Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 358-359; 486 NW2d 361 (1992).

Next, plaintiff argues that even if he was required to prove that age was a determining factor in his discharge, there was ample evidence to support such a conclusion. While this Court may determine if an error of law was made on a controlling issue in an arbitration, our review of an arbitrator's award is very limited. We may not review the findings of fact or conclusions of the arbitrator on the merits of the case. *Berrien Co Probate Judges v AFSCME*, 217 Mich App 205, 208; 550 NW2d 859 (1996).

Moreover, refusal of the arbitrator to give weight to some of plaintiff's evidence is not a basis for review. *Belen v Allstate Ins Co*, 173 Mich App 641, 645-646; 434 NW2d 203 (1988).

Finally, plaintiff argues that the arbitrator had a duty to set forth his findings of fact pursuant to MCR 2.517 as if he were acting as a trial court sitting without a jury. There is no requirement that an arbitrator make specific findings of fact and certainly there is no requirement that the form of MCR 2.517 be followed by an arbitrator. *DAIIE v Gavin*, 416 Mich 407, 428; 331 NW2d 418 (1982); *DAIIE v Ayvazian*, 62 Mich App 94, 102; 233 NW2d 200 (1975).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ E. Thomas Fitzgerald

/s/ Michael R. Smolenski