

STATE OF MICHIGAN  
COURT OF APPEALS

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DAIMLERCHRYSLER CORP,  
Plaintiff-Appellee,

UNPUBLISHED  
November 1, 2005

v

HUGH P. CARSON,  
Defendant-Appellant.

No. 255435  
Oakland Circuit Court  
LC No. 2000-021362-CZ

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Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

This case arises out of an employment arbitration award that earlier was before this Court. Plaintiff appeals as of right from a circuit court order confirming his damages as limited to \$450,000 in back pay plus interest thereon from June 30, 2001. We affirm.

Plaintiff DaimlerChrysler Corporation discharged defendant Hugh P. Carson, its employee, on March 7, 1997 for alleged violation of its code of ethical behavior. Carson challenged his dismissal and the case proceeded to arbitration.

The arbitrator made the following findings and ordered Carson reinstated. He found that DaimlerChrysler agreed, in exchange for Carson's "thorough and aggressive representation of [DaimlerChrysler], to thoroughly and fairly investigate any charges brought against employees in the situation of [Carson] brought by suppliers." Carson met his end of the bargain, as evidenced by an employee award he won. The arbitrator found that DaimlerChrysler breached its agreement to conduct a fair and thorough investigation." According to the arbitrator:

[Carson] remains an at-will employee, with the exception that [DaimlerChrysler] has a duty to thoroughly and fairly investigate any supplier initiated charges brought against him, before [it] may take action regarding any alteration in the employment relationship with [him].

The arbitrator ordered DaimlerChrysler to reinstate Carson "pending a thorough and fair investigation" and to give him back pay and benefits from the time of discharge until reinstatement. The circuit court later confirmed the award.

DaimlerChrysler appealed the confirmation order to this Court, which dismissed the appeal because the order failed to specify a sum certain for the award and therefore was not a

final order. That decision led to the September 1, 2001 award of the arbitrator, which established the dollar figures currently at issue.

Carson was never reinstated and the parties stipulated at a June 28, 2001 hearing before the arbitrator that reinstatement was not feasible. DaimlerChrysler contended that “it was impracticable (if not impossible) to conduct a reinvestigation.” It also argued that as an at-will employee Carson was, beyond nominal damages, not entitled to any damages for breach of an employment contract. The arbitrator noted Carson’s evidence that he sent out approximately five hundred resumes, attended four job fairs, and had about eighty-one interviews without finding anything other than temporary employment.

In granting an award to Carson, the arbitrator found that reinstatement did not happen and was not feasible, that DaimlerChrysler did not undertake any further investigation after the initial arbitration award, that Carson’s prospects of continued employment in the position from which he was dismissed were good, that Carson’s work-life expectancy was to the age of sixty-seven, that Carson met his obligation to mitigate damages, earning about \$18,000 annually after his discharge, and that this mitigation would be factored into the front pay award. The arbitrator used the following table of damages:

|                              |                          |
|------------------------------|--------------------------|
| Back pay                     | \$450,000                |
| Front pay to age sixty-seven | \$915,214                |
| Less \$18,000 per year       | (\$144,000) = 8 x 18,000 |
| Total damages                | \$1,221,214              |

With the arbitrator’s award in hand, the parties filed cross-motions for summary disposition, with Carson seeking an order to confirm and DaimlerChrysler seeking an order to vacate. The circuit court vacated the award and Carson appealed by right. This Court first addressed the merits of this case in *DaimlerChrysler Corp v Carson*, unpublished opinion per curiam of the Court of Appeal, decided March 6, 2003 (Docket No. 237315) [*Carson I*].

This Court found that Carson’s employment contract fell between the extremes of at-will and just cause, *Carson I, supra* at 1-2, and that the arbitrator’s award did not contravene controlling legal principles and was not facially erroneous. *Id.* at 2. This Court further held that Carson “had an expectation of continued employment until plaintiff conducted a fair and thorough investigation,” *id.* at 5, and that he “remained an at-will employee, with the exception that plaintiff had a duty to thoroughly investigate any supplier-initiated charges before taking any employment action.” *Id.* Because DaimlerChrysler had not conducted such an investigation, Carson “fell under the limited exception to the at-will policy.” *Id.* at 6. He therefore had an expectation of continued employment and applicable case law “would not limit [his] entitlement to back pay and reinstatement as initially awarded by the arbitrator.” *Id.*

However, once DaimlerChrysler fulfills its contractual obligation to conduct a fair and thorough investigation, Carson no longer has an expectation of continued employment. *Id.* An award of front-pay damages other than nominal damages was therefore inappropriate under controlling principles of law. *Id.* Front pay was also inappropriate because the arbitrator

exceeded his authority by going beyond the express terms of the arbitration agreement, which did not allow pay in lieu of future earnings. *Id.* The arbitrator also could not award front pay as an element of damages in lieu of reinstatement. *Id.* This Court vacated the award of front pay and reversed and remanded for confirmation of the rest of the arbitration award. *Id.*

The circuit court entered an order confirming the arbitration award in “the gross amount of \$450,000, plus interest thereon from June 30, 2001 two days after the hearing during which the parties agreed that reinstatement was not feasible at the rate of 5% per annum . . . .” Carson appealed as of right.

This Court reviews de novo a trial court’s decision to enforce, vacate, or modify an arbitration award. See *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 496-497; 475 NW2d 704 (1991). A trial court’s interpretation of an appellate opinion is a question of law that this Court reviews de novo. *Kalamazoo Dept of Corrections (After Remand)*, 229 Mich App 132, 134-135; 580 NW2d 475 (1998). The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals as to that issue. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000).

This Court vacated the arbitrator’s award of front pay because once DaimlerChrysler fulfilled its contractual obligation to conduct a fair and thorough investigation, Carson no longer had an expectation of continued employment. *Carson I, supra* at 5-6. Thus, Carson’s instant argument on appeal that he continues to accrue back pay until DaimlerChrysler reinstates him or conducts a fair and thorough investigation is squarely contradicted by our ruling in *Carson I*, and Carson’s damages are limited to the \$450,000 back pay award.

Affirmed.

/s/ Michael J. Talbot

/s/ Kurtis T. Wilder