

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES
COUNCIL 25, LOCAL 2724, and MICHAEL
KANGAS,

UNPUBLISHED
December 21, 2004

Plaintiffs-Appellants,

v

MARQUETTE COUNTY ROAD COMMISSION,

No. 247524
Marquette Circuit Court
LC No. 02-040118-CZ

Defendant-Appellee.

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

BORRELLO, J. (*dissenting*).

I respectfully dissent from the majority in this case because “[i]t is well-settled that arbitration is a favored means of resolving labor disputes and that courts refrain from reviewing the merits of an arbitration award when considering its enforcement. To that extent, judicial review of an arbitrator’s decision is very limited; a court may not review an arbitrator’s factual findings or decisions on the merits.” *Port Huron Area School Dist v Port Huron Ed Ass’n*, 426 Mich 143, 150; 393 NW2d 811 (1986).

In this case, the majority asserts that the arbitrator found just cause to discipline the plaintiff, but did not possess the authority to modify the punishment. While the arbitrator seemingly concluded that plaintiff had consumed alcohol while at work, I cannot find, as did the trial court and the majority, that the arbitrator concluded that the employer had just cause for punishment. Rather, the arbitrator found that while the defendant may have consumed alcohol, he did not operate any of the employer’s heavy equipment. Therefore, it could just as easily be stated that the arbitrator did not find just cause for discipline.

While this analysis may seem contorted, as a reviewing court we are “narrowly circumscribed” and limited to determining whether the arbitration award exceeded the arbitrator’s contractual authority. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 117-118; 607 NW2d 742 (1999); *Michigan State Employees Ass’n v Dep’t of Mental Health*, 178 Mich App 581, 583; 444 NW2d 207 (1989). The only issue is whether the arbitrator, in granting the award, disregarded the terms of his employment and the scope of his authority as expressly circumscribed in the arbitration contract. *Port Huron Area School Dist*, *supra* at 151-152; *Police Officers Ass’n of Michigan v Manistee Co*, 250 Mich App 339, 343;

645 NW2d 713 (2002). “‘Judicial review is limited to whether the award ‘draws its essence’ from the contract, whether the award was within the authority conferred upon the arbitrator by the collective bargaining agreement.’” *Michigan State Employees Ass’n, supra* at 583-584, quoting *Ferndale Ed Ass’n v Ferndale School Dist No 1*, 67 Mich App 637, 642-643; 242 NW2d 478 (1976).

In reviewing an arbitration award, judicial review ends if the arbitrator acted within the scope of his authority set forth in the parties’ contract. *Lenawee Co Sheriff, supra* at 118. The arbitrator is allowed to interpret and apply the agreement. *Id.* at 119. It is irrelevant whether the arbitrator’s interpretation is wrong. See *Michigan State Employees Ass’n, supra* at 584. Therefore, the majority is inaccurate when it states that the arbitrator had no right to interpret the collective bargaining agreement. Moreover, reviewing courts must be careful to avoid reviewing the merits of the underlying claim. See *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991). Thus, while we may be inclined to find that the employer did have just cause for discipline, absent express language to the contrary, an arbitration award will be presumed to be within the scope of the arbitrator’s authority. *Id.*

After reviewing the arbitrator’s opinion and award, I would find that the arbitrator recognized and adhered to the contractual limitations on his authority. Therefore, in my view, this Court’s review effectively ceases. See *Police Officers Ass’n of Michigan, supra*. This Court should not further consider the merits of the arbitrator’s decision, irrespective of whether the arbitrator incorrectly interpreted the parties’ agreement. *Port Huron Area School Dist, supra*; *Police Officers Ass’n of Michigan, supra*; *Michigan State Employees Ass’n, supra* at 584.

For these reasons, I respectfully dissent.

/s/ Stephen L. Borrello