

STATE OF MICHIGAN
COURT OF APPEALS

MSX INTERNATIONAL PLATFORM
SERVICES, LLC d/b/a MSX INTERNATIONAL,

UNPUBLISHED
May 22, 2012

Plaintiff/Counter-Defendant-
Appellant,

v

BRIAN HURLEY,

Defendant/Counter-Plaintiff-
Appellee.

No. 300569
Wayne Circuit Court
LC No. 10-006007-CL

Before: OWENS, P.J., and JANSEN and MARKEY, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent from the majority’s conclusion that the arbitration award should be vacated.

“[W]hen considering the enforcement of an arbitration award, [this Court’s] review is narrowly circumscribed.”¹ Indeed, “[c]ourts play only a limited role in reviewing arbitrators’ decisions and may vacate an award only under narrowly defined circumstances.”² “The inquiry for the reviewing court is merely whether the award was beyond the contractual authority of the arbitrator” granted to him or her by the arbitration contract.³ “[A] reviewing court cannot engage

¹ *Police Officers Ass’n of Michigan v Co of Manistee*, 250 Mich App 339, 343; 645 NW2d 713 (2002) (citations omitted; alterations in original).

² *Bell v Seabury*, 243 Mich App 413, 422 n 4; 622 NW2d 347 (2000).

³ *City of Ann Arbor v AFSCME Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009). This is why, in my view, the cases cited in the majority opinion are inapposite. Although those cases are helpful on the issue of substantive contract interpretation, that is not our inquiry. Our inquiry is merely whether the arbitrator exceeded his authority. It is well-established that arbitrators exceed their authority only where they “act beyond the material terms of the contract from which they primarily draw their authority” *Gordon Sel-Way, Inc v Spence Bros, Inc*,

in contract interpretation, which is an issue for the arbitrator to determine.”⁴ Instead, the reviewing court may only address whether the arbitration award “draws its essence” from the contract the arbitrator interpreted.⁵

If, in granting the award, the arbitrator did not disregard the terms of his or her employment and the scope of his or her authority as expressly circumscribed in the contract, *judicial review effectively ceases*. Thus, as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, a court may not overturn the decision even if convinced that the arbitrator committed a serious error.⁶

Even “[t]he fact that an arbitrator’s interpretation of a contract is wrong is irrelevant.”⁷

This case involves a dispute regarding whether Hurley was entitled to paid time off (PTO). MSX contends that the arbitrator erred in concluding that Hurley’s PTO had accrued where Hurley signed a written agreement acknowledging that MSX could terminate his employment and compensation at-will, and without cause or notice. The arbitrator drew his authority from MSX’s dispute resolution policy (DRP). The DRP granted the arbitrator the authority to review the case, and specified that arbitration “shall be final and binding upon the Company and the employee.” The arbitrator reviewed the facts, interpreted the written agreement’s terms under Michigan case law, concluded that under the terms of the agreement Hurley was entitled to PTO, and entered an award in favor of Hurley. In short, the arbitrator simply interpreted the terms of the written agreement, which was within the authority granted to him by the DRP. Accordingly, this Court is constrained by the arbitrator’s judgment, because the arbitrator was within his authority to interpret the written agreement. It is thus inappropriate for this Court to re-interpret the written agreement; judicial review must cease.⁸

MSX’s argument, in essence, is that an arbitrator exceeds his or her authority when he or she commits an error of law, and because contract interpretation is an issue of law, the arbitrator

438 Mich 488, 496; 475 NW2d 704 (1991), quoting *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982) (emphasis added).

⁴ *Ann Arbor*, 284 Mich App at 144 (citations omitted); see also *Brucker v McKinlay Transp, Inc*, 454 Mich 8, 15; 557 NW2d 536 (1997) (“[O]nly the arbitrator can interpret the contract.”); *Kaleva-Norman-Dickson Sch Dist No 6 v Kaleva-Norman-Dickson Sch Teachers’ Ass’n*, 393 Mich 583, 595; 227 NW2d 500 (1975) (“If the parties have agreed that an arbitrator shall decide questions of contract interpretation, the merits of the dispute are for the arbitrator.”).

⁵ *City of Lincoln Park v Lincoln Park Police Officers Ass’n*, 176 Mich App 1, 4; 438 NW2d 875 (1989).

⁶ *Ann Arbor*, 284 Mich App at 144 (emphasis added; citations omitted).

⁷ *Michigan State Employees Ass’n v Dept of Mental Health*, 178 Mich App 581, 584; 444 NW2d 207 (1989).

⁸ *Ann Arbor*, 284 Mich App at 144.

here exceeded his authority when he interpreted the terms of the written agreement and concluded that MSX's policy granted Hurley a vested contract right to PTO. However, case law is clear that any error at law must be clear on the face of the award itself,⁹ and an allegation that an arbitrator has exceeded his or her authority must be "carefully evaluated in order to assure that [it] is not used as a ruse to induce the court to review the merits of [the arbitrator's] decision."¹⁰ MSX's argument requests that we review the merits of the arbitrator's decision by interpreting the written agreement between Hurley and MSX anew on appeal. The majority opinion conducts an independent analysis of the same contractual authority cited by the arbitrator and merely reaches a different conclusion. That is not our role when addressing an arbitration decision.

The arbitrator's authority derived from the contract is a concept distinct from the interpretation of the contract itself. The arbitrator's authority was derived from the DRP. The arbitrator's conclusion and award derived from his interpretation of the written agreement between Hurley and MSX. MSX's argument conflates these concepts, reasoning that because the arbitrator's conclusions of law regarding contract interpretation were incorrect in its view, the arbitrator acted beyond the scope of his authority. However, "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, a court may not overturn the decision even if convinced that the arbitrator committed a serious error."¹¹ Indeed, it would be irrelevant if the arbitrator's interpretation was wrong entirely.¹² Unless an obvious error of law appears on the face of the award, which is not the case here, our review is limited to whether the arbitrator acted outside the scope of his authority granted by the DRP to interpret the written agreement. In my view, he did not.

Accordingly, that MSX disagrees with the arbitrator's conclusions regarding whether MSX's written policy granted Hurley a vested contract right in PTO is not, without more, a sufficient basis to vacate the arbitration award. For these reasons, I would affirm the trial court.

/s/ Kathleen Jansen

⁹ See, e.g., *Ottawa Co v Police Officers Ass'n of Michigan*, 281 Mich App 668, 670; 760 NW2d 845 (2008) (citations omitted) ("[T]his Court may review an error of law that is substantial and apparent on its face."); *DAIIE*, 416 Mich 407, 428-29 ("[A] reviewing court's ability to review an award is restricted to cases in which an error of law appears from the face of the award . . .").

¹⁰ *Gordon Sel-Way*, 438 Mich at 497.

¹¹ *Ann Arbor*, 284 Mich App at 144 (citations omitted).

¹² *Michigan State Employees Ass'n*, 178 Mich App at 584.