IN THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION AT JACKSON

ADAMS TV OF MEMPHIS, INC. , Licensee of WHBQ-TV,	)	Shelby County Circuit Court No. 48639 T.D.
Plaintiff/Appellant.	)	
VS.	)	C. A. NO. 02A01-9511-CV-00262
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 474 and JOHN DEBERRY and MORGAN MURRELL,	)	
Defendants/Appellees.	)	

FILED

October 15, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

From the Circuit Court of Shelby County at Memphis.
Honorable Kay S. Robilio, Judge

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OPINION FILED:

AFFIRMED

FARMER, J.

LILLARD, J. : (Concurs)
SUMMERS, Sp. J. : (Concurs)

Plaintiff-Appellant, Adams TV of Memphis, Inc., Licensee of WHBQ-TV ("Adams TV"), appeals the trial court's order denying Adams TV's application to vacate an arbitration award in favor of Defendants-Appellees, International Brotherhood of Electrical Workers, AFL-CIO, Local 474 ("Union"), John DeBerry ("DeBerry"), and Morgan Murrell ("Murrell").

DeBerry and Murrell (collectively, "Employees") were fired from their employment with Adams TV for making unauthorized personal long-distance calls on their employer's telephones. When initially confronted, the Employees either denied making the telephone calls or stated that they could not remember making them. Upon further questioning, however, the Employees admitted making many of the calls and, consequently, were terminated.

On the same day DeBerry and Murrell were terminated, Adams TV's general manager sent a memo to all employees stating that no long-distance personal telephone calls could be made without a department head's prior approval and that employees who deviated from this policy risked termination. This memo apparently was Adams TV's first communication to employees regarding its policy on long-distance telephone calls.

Pursuant to the provisions of its collective bargaining agreement with Adams TV, the Union filed a grievance on behalf of the Employees. When the grievance procedure failed to resolve the dispute, the matter was submitted to an arbitrator in accordance with the collective bargaining agreement. As pertinent, the collective bargaining agreement gave Adams TV the "exclusive right to direct its employees, the right to hire, promote, demote, transfer, discharge or discipline for just cause and to maintain discipline among employees, and generally manage the Company's business as it deems best." The issue before the arbitrator, therefore, was whether the Employees were terminated for "just cause" under the terms and conditions of the collective bargaining agreement. The agreement also provided that the arbitrator's decision "shall be conclusive, final and binding upon the parties" but that "[t]he arbitrator shall have no power to change, add to, subtract from or modify" the agreement.

In his opinion and award, the arbitrator found that the Employees' unauthorized use of company telephones was "a serious offense" that could not be tolerated but that, absent "any prior

disciplinary action regarding this type of transgression," termination was "too severe a penalty." The arbitrator determined, therefore, that a two-week suspension without pay and reimbursement of the cost of the telephone calls[1] was the appropriate penalty. Adams TV subsequently applied to the trial court for an order vacating the arbitration award.

On appeal from the trial court's order denying Adams TV's application and upholding the arbitrator's award, Adams TV presents the following issue for review:

> [Whether] [t]he trial court erred in denying [Adams TV's] Application for an Order Vacating the Arbitration Award because the arbitrator exceeded his powers.

We conclude that this issue was decided adversely to Adams TV by this court's decision in ***Adams TV of Memphis, Inc. v. Local 474, International Brotherhood of Electrical Workers***, 1996 WL 219618 (Tenn. App. 1996), ***perm. app. denied***, (hereinafter ***Adams TV-I***), and, thus, we affirm the trial court's order based on the reasoning set forth in that case.

After the appeals were filed in ***Adams TV-I*** and in this case, the Supreme Court of Tennessee decided ***Arnold v. Morgan Keegan & Co.***, 914 S.W.2d 445 (Tenn. 1996), in which the Court set forth the standard to be applied by courts in reviewing arbitration decisions. After noting that Tennessee had adopted the Uniform Arbitration Act,[2] governing the scope of judicial review of arbitration awards, the Court stated that "[t]he standard to be applied by the trial court is a narrow one. It is well established that courts should play only a limited role in reviewing the decisions of arbitrators." ***Id***. at 448. The Court then addressed the provisions of the Act which allow vacation or modification of an arbitration award under certain specifically enumerated circumstances. ***See*** T.C.A. § 29-5-313 (Supp. 1995) (governing vacation of an award);[3] T.C.A. § 29-5-314 (Supp. 1995)

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[1]The arbitrator found that the cost of DeBerry's telephone calls was $87.77 and that the cost of Murrell's calls was $51.24.

[2]T.C.A. §§ 29-5-301 to -320 (Supp. 1995).

[3]Section 29-5-313 permits vacation of an award where:

> (1) The award was procured by corruption, fraud or other undue means;

(governing modification or correction of an award). The Court concluded:

> Under the terms of the statutes, a trial court may not vacate an award simply because it disagrees with the result. [Citing T.C.A. § 29-5-313(5)].
>
> The limiting language of the statutes governing vacation and modification of arbitration awards evidences an intent to limit ***severely*** the trial court's authority to retry the issues decided by arbitration. . . .
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> . . . .
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> . . . As long as the arbitrator is, arguably, construing or applying the contract and acting within the scope of his authority, the fact that a court is convinced he committed serious error does not suffice to overturn his decision.

Arnold, 914 S.W.2d at 448-49 (emphasis in original; citations omitted).

After the Tennessee Supreme Court decided ***Arnold***, this court issued its opinion in ***Adams TV-I***, a case involving the same parties and the same collective bargaining agreement at issue in the present case. In that case, as in the present case, the arbitrator set aside an employee's termination and instead imposed a fourteen-day disciplinary suspension based on the arbitrator's interpretation of the term "just cause." ***Adams TV-I***, 1996 WL 219618, at *2. The arbitrator reasoned that, although the employee's proven misconduct made an excellent case for his termination, the concept of just cause required that the employee first be made aware that a particular

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> (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
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> (3) The arbitrators exceeded their powers;
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> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 29-5-306, as to prejudice substantially the rights of a party; or
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> (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 29-5-303 and the party did not participate in the arbitration hearing without raising the objection.
>
> The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

T.C.A. § 29-5-313 (Supp. 1995).

behavior or behavior pattern would or had jeopardized his job. ***Id***. at *2-3.

Applying the standard set forth in ***Arnold***, in ***Adams TV-I*** this court affirmed the trial court's order upholding the arbitration award. We believe that the following reasoning set forth in ***Adams TV-I*** is equally applicable to the present case:

> The collective bargaining agreement provided that an employee may be discharged for just cause, but is silent as to what procedural prerequisites attach to the requirement that discharge be for just cause. . . .
>
> As defendants correctly point out, there is a substantial body of arbitral decisions holding that the term "just cause" includes not only the substantive element of appropriate factual circumstances justifying discharge, but also the procedural requirement, frequently referred to as "industrial due process," which requires an employer to warn an employee that his conduct may result in discharge and give the employee the opportunity to explain his behavior before he is disciplined. ***See*** Julius G. Getman, ***Labor Arbitration and Dispute Resolution***, 88 YALE L.J. 916, 921 (1979). In this case, although the arbitrator agreed with plaintiff [Adams TV] that the listed instances of misconduct made "an excellent case" for termination, plaintiff had not warned [the employee] that his conduct would result in dismissal or given [the employee] an opportunity to defend himself against the charges.
>
> The arbitrator was hired by the parties to interpret the terms of the collective bargaining agreement. Because plaintiff failed to adequately warn [the employee] that his conduct may result in dismissal, the arbitrator held that his discharge was not for "just cause." The arbitrator's holding incorporates notions of industrial due process and does not exceed his powers under the collective bargaining agreement.

Adams TV-I, 1996 WL 219618, at *4.

As in ***Adams TV-I***, the arbitrator in the present case found that the Employees' misconduct constituted a disciplinable offense. In interpreting the collective bargaining agreement's "just cause" provision, however, the arbitrator determined that, absent "any prior disciplinary action regarding this type of transgression," the Employees' offense did not rise to the level of just cause as would justify termination. Implicit in the arbitrator's ruling is the notion that industrial due process required some type of warning or notice that the transgression in question would or could result in the Employees' termination. We hold that, in accordance with ***Adams TV-I***, the arbitrator did not exceed his powers in interpreting the collective bargaining agreement and, thus, that the trial

court correctly declined to vacate the arbitrator's award.

In so holding, we are reminded of the finality that courts should afford the arbitration process:

> Courts, . . . do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts. If the courts were free to intervene on these grounds, the speedy resolution of grievances by private mechanisms would be greatly undermined.

Arnold, 914 S.W.2d at 449.

The trial court's order denying Adams TV's application to vacate the arbitration award is affirmed. Costs of this appeal are taxed to Adams TV, for which execution may issue if necessary.

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FARMER, J.

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LILLARD, J. (Concurs)

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SUMMERS, Sp. J. (Concurs)