2016 IL App (1st) 141918-U

FIFTH DIVISION
November 18, 2016

No. 1-14-1918

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

MICHAEL MORRELLI,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 CH 15769
	)	
CHICAGO TRANSIT AUTHORITY and STATE MUNICIPAL TEAMSTERS CHAUFFEURS AND HELPERS UNION LOCAL 700,	)	The Honorable
	)	Rita A. Novak,
	)	Judge Presiding.
	)	
Defendants-Appellees.	)	

JUSTICE HALL delivered the judgment of the court.

Justice Lampkin concurred in the judgment.

Presiding Justice Gordon specially concurred in the judgment.

O R D E R

¶ 1 *Held*: This court affirmed the circuit court's order granting summary judgment to the employer where the employee failed to establish that the arbitrator excluded evidence material to the arbitration issue and failed to raise a genuine issue of fact that the employee's filing a claim for workers' compensation caused his employer to discharge him.

¶ 2 The plaintiff, Michael Morrelli, appeals from an order of the circuit court of Cook County granting summary judgment to the defendant, Chicago Transit Authority (CTA), on his petition seeking vacation of an arbitration award and alleging a claim for retaliatory discharge. On appeal, the plaintiff contends that: (1) the exclusion of evidence that other employees who had falsified time records were reinstated violated section 12(a)(4) of the Uniform Arbitration Act (Act) (710 ILCS 5/12(a)(4) (West 2012)), and (2) the CTA was not entitled to summary judgment where there was a question of fact as to whether the CTA discharged the plaintiff because he filed a claim for benefits under the Workers' Compensation Act (Compensation Act) (820 ILCS 305/1 *et seq.* (West 2012)).

¶ 3 BACKGROUND

¶ 4 The plaintiff was employed by the CTA and was a member of the defendant, the State and Municipals Teamsters Chauffeurs and Helpers Union Local 700 (Union), which had a collective bargaining agreement with the CTA. On June 3, 2010, the plaintiff was scheduled to

work from 7 a.m. to 3:30 p.m. but left early claiming to have injured himself. The plaintiff had a 2005 workers' compensation claim which was only partially settled at the time of the June 3, 2010 incident.

¶ 5 On August 18, 2010, the CTA discharged the plaintiff based on the following disciplinary violations: (1) leaving early without proper authorization; (2) falsifying a claim of on-duty injury; and (3) falsifying his trip sheet, which resulted in his receiving approximately four hours' pay to which he was not entitled. The Union filed a grievance on the plaintiff's behalf, and on January 26, 2011, an arbitration hearing was held.

¶ 6 During the hearing, Michael Malone, a business representative for the Union and in charge of the bargaining unit dealing with the CTA, testified that, as a result of an investigation by the inspector general's office, three employees of the CTA were found to have falsified their trip sheets or time cards. Mr. Malone was further questioned by the Union's attorney as follows:

> "Q. Are you aware of the disposition of those cases?
>
> A. I wasn't part of the process, but they're all back to work.
>
> MS. LUNDE (attorney for the CTA): Objection. If we're talking about settlement negotiations, it's not proper.
>
> ARBITRATOR KOHN: That's true. The settlement is not admissible.
>
> THE WITNESS: They went back to work. I know nothing about the settlement. But they're back to work.
>
> MS. LUNDE: I'm going to object to that entire line of questioning. If employees

were discharged in another situation but brought back to work, there's an implication that something happened. Either there was a grievance like this and if they want to question whether that occurred, that's fine.

But pretty much the only other option would be a settlement negotiation. And to bring in evidence of settlement negotiations is deeply improper."

¶ 7 The Union's attorney acknowledged that he was trying to find out if a penalty less than discharge had been granted to the other three employees. The CTA's attorney offered to call a rebuttal witness who could testify to the dispositions in those cases. The following colloquy then took place:

"ARBITRATOR KOHN: Well, if you accept [the rebuttal witness's] statement we don't even have to do that. You could just stipulate. Not stipulate, but agree and therefore, I would bar the testimony because a settlement is not admissible.

MR. CASPAR (attorney for the Union): I don't know if the specific employees [Mr. Malone] just testified to have actually been – were brought back as a result of a settlement or some other reason.

MS. LUNDE: [The rebuttal witness] does know.

ARBITRATOR KOHN: And he would testify that it was the result of a settlement?

MS. LUNDE: Yes.

ARBITRATOR KOHN: I think at that point it's not admissible.

MR. CASPAR: Fair enough."

¶ 8 On March 24, 2011, the arbitrator issued her decision. The arbitrator noted that the parties stipulated that the issues to be determined were: "Did the [CTA] have sufficient cause to discharge the [plaintiff], on August 18, 2010? If not, what shall be the remedy?"

¶ 9 The arbitrator determined that the CTA proved by clear and convincing evidence that the plaintiff did not have authority to leave work early; that he knowingly falsified a claim of on-duty injury; and that he knowingly falsified his trip sheet, constituting a theft of time. The arbitrator further determined that the penalty of discharge was commensurate with the plaintiff's violations. She noted that the CTA's corrective action guidelines provided that a theft violation would be referred to the general manager with a recommendation for discharge, and that making untrue, dishonest or misleading reports, *i.e.*, falsification, might warrant accelerated discipline. The arbitrator found that the Union's mitigation arguments were refuted by the record. In light of all the relevant circumstances, she found that the CTA demonstrated that the discharge was justified. The arbitrator ruled that the CTA had sufficient cause to discharge the plaintiff and denied the grievance.

¶10 On April 27, 2012, the plaintiff filed a petition to vacate or modify the arbitration award and asserted a claim for retaliatory discharge. In count I, the plaintiff alleged that he was deprived of a fair hearing when the arbitrator barred evidence as to what the CTA deemed proper punishment in the cases of other employees charged with offenses similar to those alleged against the plaintiff. In count II, the plaintiff alleged a claim for retaliatory discharge. He alleged that the three employees who were not terminated for falsifying their time records did not have pending workers' compensation claims, and were reinstated even though their violations were

more egregious than the plaintiff's violations. Following the denial of its motion to dismiss, the CTA answered the petition and filed affirmative defenses. Thereafter, the parties engaged in discovery.

¶ 11 The plaintiff filed a motion for judgment on count I of the petition. The plaintiff maintained that he was entitled to vacation of the arbitration award because the arbitrator refused to consider evidence that the CTA imposed less severe discipline on three employees who had falsified their time cards one or more times. The plaintiff argued that the evidence was material to the issue of whether discharge was the appropriate discipline in the plaintiff's case. He further argued that the failure to consider this evidence was prejudicial since it deprived him of the opportunity to establish that the CTA applied inconsistent, arbitrary and discriminatory punishment for the same offense. The plaintiff did not move for judgment on count II of the petition.

¶ 12 The CTA filed a motion for summary judgment on both counts of the petition. As to count I of the petition, the CTA argued that the arbitrator's decision not to consider the discipline imposed on three other employees was correct because the discipline in those cases resulted from settlement agreements which were not admissible. As to count II, the CTA argued that the plaintiff did not present any evidence that his workers' compensation claims were a factor in his discharge from CTA employment.

¶ 13 Following briefing and oral argument by the parties, the circuit court granted summary judgment to the CTA on both counts and denied the plaintiff's motion for judgment as to count I. The plaintiff filed a timely notice of appeal.

¶ 14 ANAYLSIS

¶ 15 I. Standard of Review

¶ 16 The court reviews the circuit court's grant of summary judgment *de novo*. *Wolinsky v. Kadison,* 2013 IL App (1st) 111186, ¶ 48. " 'Summary judgment is proper if, and only if, the pleadings, depositions, admissions, affidavits and other relevant matters on file show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law.' " *Wolinsky*, 2013 IL App (1st) 111186, ¶ 48 (quoting *Illinois Farmers Insurance Co. v. Hall*, 363 Ill. App. 3d 989, 993 (2006)). Summary judgment is precluded where the material facts are disputed or where reasonable people might draw different conclusions from undisputed facts. *Wolinsky*, 2013 IL App (1st) 111186, ¶ 48. In determining whether a genuine issue of material fact exists, the court must construe the pleadings, affidavits, depositions and other relevant material submitted in connection with the motion against the movant and liberally in favor of the nonmovant. *Wolinsky*, 2013 IL App (1st) 111186, ¶ 48.

¶ 17 II. Discussion

¶ 18 A. Vacation of the Award

¶ 19 The plaintiff contends that the arbitration award must be vacated because the arbitrator refused to hear evidence material to the controversy, *i.e.*, that other CTA employees had received lesser discipline for the same or greater number of violations than had the plaintiff and that he was prejudiced by the exclusion of that evidence. 710 ILCS 5/12(a)(4) (West 2012).

¶ 20 Judicial review of an arbitration award is extremely limited. *Clanton v. Ray*, 2011 IL App (1st) 101894, ¶ 24. Since the parties have agreed to have their dispute settled by an arbitrator, a court may not overrule an arbitrator's decision or vacate an award because it disagrees with the arbitrator's interpretation. *Clanton*, 2011 IL App (1st) 101894, ¶ 24. Therefore, errors in judgment or mistakes of law or fact are not grounds for vacating an award. *Clanton*, 2011 IL App (1st) 101894, ¶ 24. A gross error of law or fact appearing on the face of the award may require the vacation of the award. *Clanton*, 2011 IL App (1st) 101894, ¶ 24. "A gross error of law exists only where it appears from the face of the award that the arbitrator was so mistaken as to the law that, if the arbitrator had been informed of the mistake, the award would have been different." *Clanton*, 2011 IL App (1st) 101894, ¶ 24.

¶ 21 Section 12(a) of the Act sets forth additional circumstances in which an arbitration award must be vacated. See 710 ILCS 5/12(a) (West 2012). Pertinent to this case is section 12(a)(4) which provides in pertinent part as follows:

> "The arbitrators *** refused to hear evidence material to the controversy *** as to prejudice substantially the rights of a party." 710 ILCS 5/12(a)(4) (West 2012).

¶ 22 The plaintiff maintains that he did not seek to introduce evidence of the settlement negotiations but rather evidence that the CTA had discharged but then agreed to reinstate three employees who had committed the same violation and in some cases multiple times. He maintains that this evidence was material to the issue to which the parties stipulated. Therefore, its exclusion violated section 12(a)(4) and requires the vacation of the arbitration award.

¶ 23 Evidence offered to prove a proposition which is in issue or probative of an issue in dispute is material. *Yamnitz v. William J. Diestelhorst Co.*, 251 Ill. App. 3d 244, 250 (1993). The plaintiff relies on several cases addressing "relevant" evidence. However, "[m]ateriality relates to the propriety of the proposition to be established, whereas relevancy relates to the propriety of the proof to establish that proposition." *Yamnitz*, 251 Ill. App. 3d at 250 (citing M. Graham, Cleary & Graham's Handbook of Illinois Evidence §401.1, at 113 (4th ed. 1984)).

¶ 24 The arbitrator is in the best position to determine the materiality of the evidence. *Canteen Corp. v. Former Foods, Inc.*, 238 Ill. App. 3d 167, 178 (1992). In the present case, the excluded evidence was not material to whether the CTA had cause to discharge the plaintiff, unlike the other employees and, in any event, did not prejudice him.

¶ 25 In the cases of the three employees, their violations were falsification of time cards, either once or multiple times. All three were discharged and filed grievances. Instead of an arbitration hearing as was held in this case, the CTA, the Union and the employees entered into settlement agreements which included, *inter alia*, that nothing in the agreement constituted an admission of fault, liability or wrongdoing on the part of the CTA, the Union or the employee.

¶ 26 Like the other employees, the plaintiff was discharged and filed a grievance. Unlike the other employees, following a hearing, he was found guilty of falsification of his trip sheet, leaving work early and falsifying a claim of an on-duty injury. As the arbitrator noted in her findings, the CTA rules provide for the discharge of an employee for the violations of which the plaintiff was found guilty. The other employees were neither found guilty following a hearing nor required to admit their guilt as part of the settlement agreements. Therefore, the excluded evidence does not go to whether the CTA's decision to discharge the plaintiff was inconsistent with the discipline imposed in the other cases and did not result in prejudice to him.

¶ 27 The cases relied on by the plaintiff are distinguishable as neither addressed the issue of whether the evidence was material. In *Johnson v. Baumgardt*, 216 Ill. App. 3d 550 (1991), the reviewing court vacated the arbitration award where the arbitrators declined to hear material evidence on issues they erroneously determined were not subject to arbitration per the parties' contract. See *Johnson*, 216 Ill. App. 3d at 559. In *Clanton*, the issue was whether in considering an agreement that was not part of the arbitration evidence, the arbitrator committed a gross error of law. This court determined that by considering the agreement, the arbitrator exceeded his authority requiring that the arbitration award be vacated. *Clanton*, 2011 IL App (1st) 101894, ¶ 44.

¶ 28 The plaintiff relies on *Roman v. Cook County Sheriff's Merit Board*, 2014 IL App (1st) 123308 to support his argument that, by reinstating the three other employees, the CTA acknowledged that the proper punishment for the violation committed by the plaintiff did not include termination of employment. In *Roman*, the reviewing court found that the punishment

the Merit Board imposed on the plaintiff-officers was grossly disproportional to that imposed on two other officers, one of whom was a senior officer who recruited them for his secondary employment scheme in violation of the department of correction rules. *Roman*, 2014 IL App (1st) 123308, ¶ 147. While the department of correction rules permitted discharge for a single violation, there was testimony that the usual discipline for unauthorized secondary employment was a three-to-five day suspension. The court remanded the case to the Merit Board to vacate the terminations and reinstate the plaintiff-officers with periods of suspension and reduce the periods of suspensions imposed on the other plaintiff-officers. *Roman*, 2014 IL App (1st) 123308, ¶¶ 146-152.

¶ 29 Apart from the fact that the appeal in *Roman* was not subject to the limitations applicable to judicial review of an arbitration case, the court there was comparing punishments imposed after determinations of guilt and finding them disproportionate based on the level of involvement in the same scheme. In the present case, the punishments were not disproportionate, since unlike the plaintiff, the other three employees neither admitted their guilt nor were found guilty of any violations.

¶ 30 We conclude that summary judgment to the CTA on count I of the petition was proper. The arbitrator did not violate section 12(a)(4) of the Act by refusing to hear evidence that other employees had been reinstated to employment after being discharged for falsifying time because the excluded evidence was not material to the issue the parties had stipulated to for decision by the arbitrator and did not result in prejudice to him.

¶ 31 B. Retaliatory Discharge

¶ 32 The plaintiff contends that he presented sufficient evidence that his discharge by the CTA was in retaliation for his workers' compensation claim to raise a genuine issue of material fact precluding summary judgment.

¶33 Under section 4(h) of the Compensation Act (820 ILCS 305/4(h) (West 2012)), an employer may not discharge or threaten to discharge an employee for filing a claim for benefits. The underlying principle of the retaliatory discharge exception to the general rule in Illinois of at-will employment is recognition that an employer may not present an employee with a choice between his job and exercising his rights under the Compensation Act. *Siekierka v. United Steel Deck, Inc.*, 373 Ill. App. 3d 214, 221 (2007).

¶ 34 To state a cause of action for retaliatory discharge based on the filing of a workers' compensation claim, the plaintiff must show: (1) that he was an employee before the injury; (2) that he exercised a right granted by the Compensation Act; and (3) that he was discharged and that the discharge was causally related to his filing a claim under the Compensation Act. *Siekierka*, 373 Ill. App. 3d at 221. The plaintiff has the burden of establishing elements of the cause of action. *Siekierka*, 373 Ill. App. 3d at 221. The first and second elements are not disputed in this case.

¶ 35 The ultimate issue in deciding causation is the employer's motive in discharging the employee. *Clemons v. Mechanical Devices Co.*, 184 Ill. 2d 328, 336 (1998). To prove causation, the plaintiff was required to demonstrate that the CTA's stated reason for discharging him was

invalid and pretextual. *Hartlein v. Illinois Power, Co.*, 151 Ill. 2d 142, 160 (1992). Pretext is " 'a purpose or motive alleged or an appearance assumed in order to cloak the real intention or state of affairs.' " *Marin v. American Meat Packing Co.*, 204 Ill. App. 3d 302, 307 (1990) (quoting *Wayne v. Exxon Coal USA, Inc.*, 157 Ill. App. 3d 514, 518 (1987)). A plaintiff may carry his burden of proof by showing that the employer's explanation for discharging him is not believable or that it raises a genuine issue of fact as to whether the employer was retaliating against him. *Herman v. Power Maintenance & Constructors, LLC*, 388 Ill. App. 3d 352, 364 (2009).

¶ 36 The plaintiff failed to produce any evidence which showed or raised a genuine fact issue that the CTA's reason for discharging him was invalid or pretextual. The arbitrator found that the plaintiff had violated three CTA rules, two of which involved falsification of reports and which were punishable by discharge from employment. The fact that the plaintiff had a pending claim under the Compensation Act and contemplated filing a new one based on his alleged June 3, 2010, injury did not render the CTA's reasons for discharging him pretextual or invalid. *Heldenbrand v. Roadmaster Corp.*, 277 Ill. App. 3d 664, 668 (1996) ("an employer is not liable for retaliatory discharge solely because the employer fired an employee who has previously filed a workers' compensation claim").

¶ 37 The plaintiff maintains that the fact that the three other CTA employees were reinstated to their employment raises a genuine issue of fact. He points out that those employees were guilty of the same or more egregious violations of the same rules he was subject to, and none of them had prior workers' compensation claims. In order to infer that the discipline imposed was

unreasonable, the factual circumstances surrounding the discharge of other employees must be sufficiently similar for a meaningful and informed comparison to be performed by the reviewing court. *Rodriguez v. Weiss*, 408 Ill. App. 3d 663, 668-67 (2011). Nonetheless, " 'cause for discharge can be found regardless of whether other employees have been disciplined differently.' " *Rodriguez*, 408 Ill. App. 3d at 668 (quoting *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 442 (1992)).

¶ 38 The plaintiff overlooks the fact that the other three CTA employees while discharged for their violations of the rules, did not have their guilt determined in a hearing and were not required to admit their guilt in the settlement agreements reinstating them to CTA employment. Moreover, the plaintiff's allegation that none of the three employees had prior or pending workers' compensation claims was made on "information and belief." As to two of the three reinstated employees, in its answers to plaintiff's interrogatories, the CTA denied the plaintiff's claim that none of the three employees had previously-filed or pending claims for workers' compensation. The plaintiff has offered no evidence that the CTA's answer was false. Thus, there are insufficient factual similarities to allow the inference that the plaintiff's discharge was unreasonable when compared with the three other CTA employees.

¶ 39 The plaintiff failed to show or come forward with some evidence that the cause of his discharge from CTA employment was his filing of claims for benefits under the Compensation Act. In the absence of any genuine issue of material fact, we conclude that the award of summary judgment to the CTA on count II was proper.

¶ 40 CONCLUSION

¶ 41 The judgment of the circuit court is affirmed.

¶ 42 Affirmed.

¶ 43 PRESIDING JUSTICE GORDON, specially concurring:

¶ 44 I agree with the majority that the trial court grant of summary judgment must be affirmed, but I write separately to bring out additional factors that need to be considered. Plaintiff first contends on appeal that the exclusion of evidence that other employees who had falsified time records were reinstated violated section 12(a)(4) of the Uniform Arbitration Act (710 ILCS 5/12(a)(4) (West 2012)).

Section 12(a)(4) states that the court shall vacate an award where:

> "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 Section 5, as to prejudice substantially the rights of a party[.]" 710 ILCS 5/12(a)(4) (West 2012).

¶ 45 The charges against the three other employees were based on falsified time records and those claims were settled by the parties and the employees were reinstated to their employment with the CTA. The charges against the plaintiff in the case at bar were different. The CTA discharged plaintiff based on three different violations: (1) leaving early without proper authorization; (2) falsifying a claim of on-duty injury; and (3) falsifying time records. If the

records on the three employees contained the same charges as that of plaintiff, I would find that the arbitrator erred in not allowing those cases into evidence. However, there was no foundation laid by plaintiff to show the same charges nor was an offer of proof made by plaintiff to provide the necessary information for us to review.

¶ 46 Plaintiff then contends that the CTA was not entitled to summary judgment on the retaliation case because there was a question of fact as to whether the CTA discharged plaintiff because he filed a workers' compensation claim. As the majority pointed out in ¶ 34, plaintiff has the burden of proving that his discharge was causally related to his filing a workers' compensation claim. No evidence was provided by plaintiff of this factor. Evidence that other employees settled their disputes with the CTA based on only falsifying time cards is not evidence that plaintiff was discharged for filing a workers' compensation claim when plaintiff was charged with two other violations of CTA rules and policies. If the arbitrator allowed the cases of charges against the three other employees into evidence, there is nothing in those cases in the record of this case that would infer that plaintiff was discharged for filing a workers' compensation claim.