IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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| MILK DRIVERS, DAIRY AND ICE CREAM EMPLOYEES, LAUNDRY AND DRY CLEANING DRIVERS, CLERICAL AND ALLIED WORKERS, LOCAL UNION NO. 387 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,<br><br>Plaintiff,<br><br>vs.<br><br>ROBERTS DAIRY,<br><br>Defendant. | **No. 4:03-cv-40385**<br><br>**ORDER ON PLAINTIFF'S AMENDED MOTION FOR SUMMARY JUDGMENT AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT** |

This matter is before the Court on Plaintiff's Motion for Summary Judgment (Clerk's No. 17) and Defendant's Cross-Motion for Summary Judgment (Clerk's No. 27). Attorneys for the Plaintiff are Paige Fiedler, Scott Soldon, and Yingtao Ho; attorneys for the Defendant are Sharon Malheiro and Stephen Darden. No hearing has been requested, and the Court finds that a hearing is not necessary. The Court considers the matter fully submitted for ruling on the pending motions.

## PROCEDURAL HISTORY

The Plaintiff, Milk Drivers, Dairy and Ice Cream Employees, Laundry and Dry Cleaning Drivers, Clerical and Allied Workers, Local Union No. 387 a/w/ International Brotherhood of Teamsters, AFL-CIO ("Local 387" or "the Union"), filed a Complaint

against the Defendant, Roberts Dairy Company ("Roberts Dairy" or "the Company"), on July 11, 2003. On August 8, 2003, Roberts Dairy filed a motion to dismiss the complaint. After wandering through an unnecessary tangle of pleadings and motions, the Court granted in part and denied in part Defendant's motion to dismiss in an order dated November 26, 2003.

On September 12, 2003, Local 387 filed a Motion for Summary Judgment. Roberts Dairy responded by filing a motion to strike Plaintiff's Motion for Summary Judgment on September 18, 2003, which was denied by the Court on November 26, 2003. Local 387 subsequently filed an Amended Motion for Summary Judgment. Following the Court's ruling on its motion to dismiss, Defendant filed an Answer and a Cross-Motion for Summary Judgment. Plaintiff's Amended Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment are the only motions currently pending before the Court in this action.

## BACKGROUND FACTS

### A. The Parties and Their Collective Bargaining Agreement

Local 387 is a labor organization within the meaning of 29 U.S.C. § 152(5). Its principal offices are located in Des Moines, Iowa. Local 387 is the collective bargaining representative of, among others, route salesmen employed by area dairy industry employers, including Roberts Dairy. Roberts Dairy is an employer within the

meaning of 29 U.S.C. § 152(2), in an industry affecting commerce as that term is defined by the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 141 et seq. It has a place of business in Des Moines, Iowa.

Local 387 and employers in the dairy industry entered into a collective bargaining agreement entitled Master Dairy Agreement ("the Agreement" or "CBA"). Roberts Dairy is a signatory to the Agreement. The Agreement sets out the manner of resolving grievances between the Union and signatory employers, e.g., Roberts Dairy. The Agreement provides that grievances may be resolved by the Iowa State Joint Market Dairy Grievance Committee. The grievance may ultimately proceed to a Joint Area Committee for further proceedings if an impasse is reached at the Joint State Committee stage. The Agreement further provides that the decisions made by these committees are final and binding to the parties.

Kent Stuart ("Stuart") was a bargaining unit wholesale route salesman with Roberts Dairy. On February 10, 2003, the Company issued a three-day suspension to Stuart. Darryl David ("David") was a bargaining unit route salesman with Roberts Dairy. On February 27, 2003, the Company discharged David.[1]

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[1] The facts surrounding Stuart's suspension and David's discharge are not relevant to the lawsuit. It is not within the province of the Court to review the merits of arbitration awards. See United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960) ("The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements.").

The Agreement, to which both Roberts Dairy and the Union are signatories, contains a detailed, albeit not comprehensive, grievance process which is outlined in Article 7. Article 7.8 describes two six-person joint labor-management committees contemplated under the Agreement, i.e., a Joint State Committee and a Joint Area Committee. Disputes not settled by the Joint State Committee proceed to the Joint Area Committee for further attempt at resolution.

Under Article 7.8 of the Agreement, both the Joint State Committee and Joint Area Committee shall consist of three persons chosen by the employer and three persons chosen by the union, for a total of six people. Employer representatives can be from other employer signatories not involved in the grievance. In disciplinary cases, however, Article 7.8 of the Agreement provides that the employer shall be represented on the committee by one employee or representative directly involved in the dispute or grievance. There is no provision in Article 7 or elsewhere in the Agreement that allows either a Joint State Committee or a Joint Area Committee to exist in the absence of the six-person panel provided for in Article 7 of the Agreement; but neither is there a provision stating all six members are required to hear and render a decision in a grievance – there is no express quorum requirement in the CBA for rendering decisions or making awards.

The only provision in the Agreement for a so-called default judgment appears in Article 7.8 of the Agreement. This provision provides for default judgment if a

party fails to appear before a Joint Area Committee without notice or reasonable excuse, in which case the Joint Area Committee will decide the case in favor of the attending party. Paragraph 3 of Article 7.8 of the Agreement states the following in relation to default judgments:

> When either party is unable to submit to, or appear at, the Joint Area Committee stage of the grievance procedure because of legitimate emergency or Act of God, such party shall attempt to notify the other of reason for absence as soon as possible. Failure to provide reasonable excuse and/or notice to the party who does attend or submit, will decide the grievance for such attending or submitting party.

There is not a similar provision in the Agreement for default judgment at the Joint State Committee stage.

**B. The Grievance Process at Issue**

The events surrounding the disciplinary measures taken against Stuart and David became the subject of grievances to be heard by a Joint State Committee. The hearings were scheduled for March 24, 2003. Mike Klootwyk, chairman of the Joint State and Joint Area Committees, was to represent the Union at the hearings. Tom Frederickson, Human Resources Manager for Roberts Dairy, was to present the case for the Company at the hearings. Tim Cashen, a Roberts Dairy employee, was to sit on the Joint State Committee as the "employee" employer representative that is required in disciplinary cases. Two employees from a nearby competitor (Anderson Dairy) were to make up the remaining two spots for employer representatives. There

were also three union representatives scheduled to sit on the Joint State Committee at the March 24 hearing.

On March 24, 2003, a committee[2] did hear the grievances of both Stuart and David. Following a hearing of the available evidence, the Committee issued decisions upholding the grievances of both Stuart and David. Roberts Dairy received notice of the Committee's decisions concerning Stuart and David in either March or April, 2003.[3]

Roberts Dairy claims, however, that Frederickson, while en route to the hearings, received a telephone call from Jerry Steffensmeier, the Iowa Division Manager for Roberts Dairy. Frederickson was apprised that Cashen, the "employee" employer representative, was too ill to attend the hearing. Frederickson immediately notified Klootwyk by telephone voicemail of Cashen's illness and the resulting need

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[2] Central to the parties' respective motions is whether the committee convened to hear the Stuart and David grievances constituted a valid Joint State Committee under the Agreement such that its decisions are final, binding, and enforceable. The committee that heard the March 24 Stuart and David grievances will be referred to herein as "the Committee".

[3] Local 387 asserts Roberts Dairy was notified on March 25, 2003, while Roberts Dairy maintains it was not notified until April of 2003. However, a letter from Frederickson dated March 28, 2003, referenced a March 25, 2003, e-mail detailing the decision reached by the Committee. Regardless of when the notification was received, more than 90 days passed without any move to vacate the award by Roberts Dairy.

for postponement of the hearing.[4] Frederickson proceeded to call the remaining two management representatives and informed them there was no reason to appear at the hearing as a result of Cashen's illness.

Despite the reported exigency, the three Union representatives proceeded to receive evidence from the charging party, decided in favor of the Union, and notified the Company of the Committee's decision. In granting Stuart's and David's grievances, the Committee ordered the Company to reinstate David and remunerate both Stuart and David for back pay and lost benefits. Frederickson voiced his objection to the ruling in person at the next Joint State Committee hearing, held in April 2003. Additionally, Frederickson voiced his objection to Joint Area Committee representatives and others in May 2003. Roberts Dairy maintains its complaint "fell on deaf ears" as no one would listen to its objections.

As of the filing of the Complaint, Roberts Dairy had not complied with the arbitration awards. Nor had the Company moved to vacate the awards.

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[4] Frederickson followed the customary practice to reach Klootwyk through the telephone at the Union Local as this telephone automatically rolls over to Klootwyk's mobile phone in the event no one is present at the Union Local to receive the call. Klootwyk admits that he received the voicemail message prior to the scheduled hearing time, albeit a scant ten minutes before the hearings were scheduled to begin. The record reflects Klootwyk did report the Frederickson communiqué to the Committee prior to commencement of the hearings.

Local 387 now seeks judicial enforcement of the arbitration award. Defendant's earlier motion to dismiss pursuant to Rule 12(b)(6) was granted as far as it related to any claim to confirm the arbitration awards brought pursuant to 9 U.S.C. § 9, as the Court found this remedy was unavailable to Local 387 under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. The motion to dismiss was denied, however, as far as it related to any claim to enforce the arbitration awards pursuant to Section 301 of the LMRA, 29 U.S.C. § 185, and it is the action for enforcement pursuant to the LMRA that remains before the Court.

## ANALYSIS

### A. Standard for Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment should be rendered

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). To avoid summary judgment, the nonmoving party must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial. See Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Wilson v. Southwestern Bell Tel. Co., 55 F.3d 399, 405 (8th Cir. 1995).

The nonmoving party must go beyond the pleadings, and by affidavits, depositions, answers to interrogatories, and admissions on file, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 324. While the quantum of proof that must be produced to avoid summary judgment is not precisely measurable, it must be enough evidence for a reasonable jury to return a verdict in its favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986).

In considering a motion for summary judgment, the Court must view all the facts in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986) (citations omitted); Rifkin v. McDonnell Douglas Corp., 78 F.3d 1277, 1280 (8th Cir. 1996). The question before this Court is whether the record, when viewed in a light most favorable to the nonmoving party, shows there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. See Mansker v. TMG Life Ins. Co., 54 F.3d 1322, 1326 (8th Cir. 1995) (citing Celotex, 477 U.S. at 322-23, and Anderson, 477 U.S. at 249-50).

**B. Plaintiff's Motion for Summary Judgment**

Local 387 moves for summary judgment on the basis that Roberts Dairy is precluded from challenging the grievance award as determined by the Committee that

heard the grievances. Local 387 contends the undisputed facts establish its entitlement to relief. In its Amended Motion for Summary Judgment, Local 387 requests the Court order the following: reinstatement of David; payment of back pay and benefits to David; pension contribution for David; payment of back pay and benefits to Stuart; payment of interest on all back pay and benefits; and payment to Local 387 for court costs and reasonable attorneys' fees.

According to Local 387, Roberts Dairy agreed that all decisions reached by the Committee were final and binding by signing the Agreement. On March 24, 2003, the Committee ordered the reinstatement of discharged employee David, and full back pay and benefits for employees David and Stuart. Roberts Dairy has not moved to vacate the award, and substantially more than 90 days have passed since it received notice of the award. The Union contends this failure to file a timely motion to vacate now precludes Roberts Dairy from contesting enforcement of the arbitration awards. Accordingly, Local 387 contends summary judgment in its favor is appropriate.

### C. Defendant's Cross-Motion for Summary Judgment

Defendant's main contention in resistance to Plaintiff's motion and in support of its own cross-motion is that a proper committee under the Agreement has neither heard nor rendered a decision or award regarding the grievances which Local 387 seeks to enforce in this action. Roberts Dairy argues that the Agreement mandates a Joint State Committee must consist of six representatives and that these six

representatives are to be made up of three employer representatives and three union representatives.

According to Roberts Dairy, in the absence of the six representatives *as outlined*, a Joint State Committee does not exist by definition under the Agreement and thus cannot render an award in a grievance proceeding. Roberts Dairy argues this has occurred in the present case as the grievance hearing was held and a decision rendered by a committee consisting solely of three union representatives, and without an "employee" employer representative present. The Company further contends the Committee's decision to proceed does not "draw its essence" from the CBA between the parties. As a result, Roberts Dairy maintains summary judgment in its favor is proper because there is no award to enforce.

## D. Arbitration Awards Made Pursuant to Collective Bargaining Agreements

### 1. General Rules of Judicial Review

A federal court has jurisdiction under the LMRA to enforce or confirm an arbitration award that is final and binding under the collective bargaining agreement. General Drivers, Warehousemen & Helpers, Local Union No. 89 v. Riss & Co., 372 U.S. 517, 519 (1963) (citing Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 456, n.6 (1957), and United Steelworkers of America v. Pullman-Standard Car Mfg. Co., 241 F.2d 547, 551-52 (3d Cir. 1957)); see also Enterprise Wheel & Car Corp., 363 U.S. at 596-97; United Mine Workers of America v. Peggs Run Coal

Co., 343 F. Supp. 68, 69 (W.D. Pa. 1972); 29 U.S.C. § 185. Under Eighth Circuit and Iowa law, a party can file a motion to vacate a binding arbitration award under § 301 of the LMRA, 29 U.S.C. § 185, only if the motion is filed within 90 days after receiving notice of the award. See Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, & Helpers of America v. Kansas City Piggy Back, 88 F.3d 659, 661 (8th Cir. 1996) (holding "that an action to enforce an arbitration award entered pursuant to an arbitration clause in a collective bargaining agreement is governed by the appropriate [state] statute of limitations"); Int'l Ass'n of Machinists & Aerospace Workers, Local Union 2548, AFL-CIO v. Victor Fluid Power Co., 369 N.W.2d 805, 808-09 (Iowa 1985) (concluding "the language of [the Iowa Code] supports the conclusion that the legislature intended the ninety-day limitation period to apply to an arbitration award rendered pursuant to a collective bargaining agreement").

The role of the courts is limited, however, as courts "have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim." United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 567-68 (1960) (internal citations omitted). A reviewing court cannot overturn an arbitration award as long as the award "draws its essence" from the collective bargaining agreement. Enterprise Wheel & Car Corp., 363 U.S. at 597. Moreover, a court cannot overturn an award even if it is convinced the arbitrator committed serious

error. United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987) (recognizing courts are not to hear claims of factual or legal error by an arbitrator nor should courts reject an award on the grounds the arbitrator misread the contract). This is "an extraordinary level of deference" to the decision of the arbitrator. Keebler Co. v. Milk Drivers & Dairy Employees Union, Local No. 471, 80 F.3d 284, 287 (8th Cir. 1996); see also Major League Baseball Players Ass'n v. Garvery, 532 U.S. 504, 509 (2001) (reiterating that "if an arbitrator is even 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.") (internal quotations and citations omitted); Teamsters Local Union No. 61 v. United Parcel Serv., Inc., 272 F.3d 600, 604 (D.C. Cir. 2001) (noting courts play a "limited role" in reviewing arbitration awards made pursuant to a collective bargaining agreement) (citing Misco, Inc., 484 U.S. at 36). However, before even dealing with the parties' contentions concerning the validity of the arbitration awards, the Court must determine whether the asserted defenses to enforcement of the arbitration awards are even properly before the Court.

**2. Timely Objection, Motion to Vacate, and Preservation of Defenses**

Local 387 contends Roberts Dairy waived its right to contest the award by not pursuing a motion to vacate. See Domino Group, Inc. v. Charlie Parker Mem'l Found., 985 F.2d 417, 419-20 (8th Cir. 1993) (finding that generally a party seeking to

challenge the validity of an arbitration award must timely file a motion to vacate the award and that failure to do so typically bars that party from raising any defenses to confirmation of the award). The rule is clear that a party is precluded from asserting any defenses in a motion to confirm or enforce under the LMRA that it could have raised as part of a motion to vacate. See Sheet Metal Workers Int'l Ass'n, Local Union No. 36 v. Systemaire, Inc., 241 F.3d 972, 975 (8th Cir. 2001); Domino Group, Inc., 875 F.2d at 419-20; Local 2, Int'l Bhd. of Elec. Workers, AFL-CIO v. Anderson Underground Constr., Inc., 907 F.2d 74, 76 (8th Cir. 1990). This logically includes affirmative defenses related to the validity and enforceability of the arbitration awards at issue, including jurisdictional defenses. Thus, a party *must* file a motion to vacate, even if that party believes the award is invalid or that the arbitrator did not have the authority or jurisdiction to grant the awards.

This rule provides consistency and predictability for parties in similar circumstances. The rule further preserves the purpose and intent of the federal labor laws and protects the arbitration process under collective bargaining agreements. Teamsters Local No. 579 v. B & M Transit, Inc., 882 F.2d 274, 277 (7th Cir. 1989) (citations omitted) (finding this rule in cases involving arbitration awards under collective bargaining agreements is intended to enhance the speed and effectiveness of arbitration as well as to provide fair review of the decision of the arbitrator, and serves to preclude

the losing party from dragging out proceedings, thereby diluting the integrity of the arbitration award).

This rule is amply supported and even more vividly illustrated in the decisions from other federal courts. Indeed, it has been found that the "courts have uniformly held that a defendant's failure to move to vacate the arbitration award within the prescribed time period precludes it from seeking affirmative relief in a subsequent action to enforce the award." Int'l Bhd. of Elec. Workers, Local Union No. 969 v. Babcock & Wilcox, 826 F.2d 962, 966 (10th Cir. 1987) (citations omitted); see also Sanders-Midwest, Inc. v. Midwest Pipe Fabricators, Inc., 857 F.2d 1235, 1237-38 (8th Cir. 1988) (finding "[t]he authorities agree that a party may not assert a defense to a motion to confirm that the party could have raised in a timely motion to vacate, modify, or correct the award.") (citations omitted); see, e.g., Local 802, Associated Musicians of Greater N.Y. v. Parker Meridien Hotel, 145 F.3d 85, 89 (2d Cir. 1998) (agreeing with determination that "'a defendant's failure to move to vacate [an] arbitration award within the prescribed time period for such a motion precludes it from seeking affirmative relief in a subsequent action to enforce the award.'") (quoting B & M Transit, Inc., 882 F.2d at 276-78); Int'l Longshoremen's Ass'n, AFL-CIO v. Cataneo Inc., 990 F.2d 794, 800 (4th Cir. 1993) (finding that a party may not "sit back with impunity until faced with a motion in federal court and assert a defense it could have raised . . . in a [timely] motion to vacate."); Serv. Employees Int'l Union Local 36, AFL-CIO v. City

Cleaning Co., 982 F.2d 89, 93 (3d Cir. 1992) (finding that court was precluded from deciding defendant's argument "that the settlement of the unfair labor practice charges filed with the NLRB renders the grievance committee's report and award unenforceable" because defendant "failed to raise this issue in a timely motion to vacate, modify or correct the grievance committee's award."); B & M Transit, Inc., 882 F.2d at 276-78 (reasoning that "a defendant's failure to move to vacate [an] arbitration award within the prescribed time period for such a motion precludes it from seeking affirmative relief in a subsequent action to enforce the award.") (internal quotations and citations omitted); Occidental Chem. Corp. v. Int'l Chem. Workers Union, 853 F.2d 1310, 1317 (6th Cir. 1988) (discounting plaintiff's contention that "even if its action to vacate the award was time-barred, the district court erred by merely rubber stamping its approval of the award" and that it "should have been given an opportunity to address the deficiencies of the award" as "[t]his argument overlooks the settled rule that objections that might have formed the basis for a timely action to vacate an award may not be raised as defenses in an action to confirm the award after the limitations period for an action to vacate has expired"); Babcock & Wilcox, 826 F.2d at 966 (finding that because defendant's affirmative defenses could have been raised in a motion to vacate, defendant was precluded from asserting those defenses in an action filed by the union to confirm and enforce an arbitration award); Prof'l Adm'rs, Ltd. v. Kopper-Glo Fuel, Inc., 819 F.2d 639, 642 (6th Cir. 1987) (agreeing with other circuit courts' conclusion

that failure to raise defenses to an arbitration award within the proscribed time period for moving to vacate precludes that party from rasing those defenses in an action to confirm) (citations omitted); Plumbers' Pension Fund, Local 130, U.A. v. Domas Mech. Contractors, Inc., 778 F.2d 1266, 1268 (7th Cir. 1985) (finding that "[s]ince the company's defense to the award's enforcement involves an attack on the award's validity, an attack the company could have made in an action to vacate the award," the company was precluded "'from seeking affirmative relief in a subsequent action to enforce the award.'") (quoting Chauffeurs, Teamsters, Warehousemen & Helpers, Local Union No. 135 v. Jefferson Trucking Co., 628 F.2d 1023, 1025 (7th Cir. 1980)); Bhd. of Teamsters Local 70 v. Celotex Corp., 708 F.2d 488, 490 (9th Cir. 1983) ("[A]n unsuccessful party at arbitration who did not move to vacate the award within the prescribed time may not subsequently raise, as affirmative defenses in a suit to enforce the award, contentions that it could have raised in a timely petition to vacate the award."); Serv. Employees Int'l Union v. Office Center Servs. Inc., 670 F.2d 404, 412 (3d Cir. 1982) (stating that "if a defendant has important defenses to an arbitration award, he should raise them within the period prescribed for actions to vacate rather than wait to raise them as defenses in a confirmation proceeding."); United Steel Workers of America, AFL-CIO-CLC v. Good Humor-Breyers, Inc., 2001 WL 289898, at *2 (D. Md. March 21, 2001) (finding that even though "[defendant's] arguments may be meritorious, . . . it has waived these by failing to bring this action within thirty days of the arbitration award" as defendant "cannot assert defenses it could have raised

in a timely suit to vacate the award.") (citing Cataneo Inc., 990 F.2d at 800); Sheet Metal Workers Local Union No. 20 v. Baylor Heating & Air Conditioning, Inc., 688 F. Supp. 462, 471 (S.D. Ind. 1988) ("When a party is dissatisfied with an arbitration award and believes that the award is not valid, it must make a timely challenge to the award through a motion to vacate the award.").

In the present case, Roberts Dairy did not file a motion to vacate at any time, much less within the 90-day limitations period in Iowa for such motions. The record clearly reflects the Company was aware of the circumstances and sensitive to the issues well within the limitations period. The only proffered reason for not moving to vacate the awards was the belief that the Committee could not render a decision in the grievance hearings and thus there was no award to vacate. This posture may very well have been successful; however, it must have been asserted in a motion to vacate. Because it was not, Roberts Dairy is now precluded from asserting it in the present action to enforce the arbitration awards.[5]

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[5] Roberts Dairy contends that it has preserved its affirmative defenses and ability to defend against the arbitration awards in the present action even though it failed to file a timely motion to vacate. The Company argues that it complied with one of the three alternatives from Local Union No. 36, Sheet Metal Workers' Int'l Ass'n, AFL-CIO v. Atlas Air Conditioning. See Local Union No. 36, Sheet Metal Workers' Int'l Ass'n, AFL-CIO v. Atlas Air Conditioning, 962 F.2d 770, 771-72 (8th Cir. 1991) (finding an employer can object to an arbitration proceeding in the following three ways to preserve its defenses: (1) arbitrate the merits subject to a jurisdictional objection; (2) seek declaratory or injunctive relief prior to the commencement of arbitration; or (3) notify the arbitration panel of a refusal to arbitrate). The Court finds, however, that even if Roberts Dairy met one of the Atlas Air Conditioning

For the foregoing reasons, the Court finds summary judgment in favor of the Union is required. While at first blush the result seems unfairly harsh to Roberts Diary, the law mandates this result. Moreover, Roberts Dairy had at its disposal the option to file a motion to vacate but failed to avail itself of this option. The Company's failure to file a motion to vacate precludes it from defending the present action on the defenses asserted.

**3. Remaining Contentions**

The remaining contentions primarily come from Defendant's cross-motion for summary judgment and Plaintiff's resistance to that motion. As previously stated, Roberts Dairy argues the Committee hearing the grievances was not the proper arbitrator, and therefore any resulting award is invalid. The Company further contends the actions and decision of the Committee do not "draw their essence" from the collective

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alternatives to preserve defenses, the affirmative defenses would not be preserved for failure to file a timely motion to vacate. Cf., Systemaire, Inc., 241 F.3d 975-79 (finding that because defendant failed to file a timely motion to vacate, the court must consider whether such failure precluded the court from considering defendant's defenses and then discussing the three alternatives to preserve a defense as delineated in Atlas Air Conditioning, where Judge Beam in dissent would have found Systemaire reserved its defenses under Atlas Air Conditioning even though Systemaire did not file a timely motion to vacate). Indeed, none of the preservation devices suggested by Atlas Air Conditioning was specifically utilized here. Having reported the illness of a participant and indicated the need for a postponement, the Company relied upon the good will of the Union rather than a more direct objection to the process. When that good will was not forthcoming, Roberts Dairy was obliged to seek a remedy through a motion to vacate the awards, at which time it could have argued its actions were effectively notice to the panel of a refusal to arbitrate.

bargaining agreement and that the *disciplinary* grievance hearings could not be conducted without the presence of an "employee" employer representative. Local 387 countered with its arguments that the Committee was the proper arbitrator, that the Committee's actions complied with the requirements of the CBA, that the Company should not be rewarded for sabotaging the agreed-upon grievance process, and that the lack of a quorum, if even required, was harmless error.

As the Court has found Roberts Dairy is precluded from asserting its defenses in this action, the Court does not assess the validity of the Company's contentions. Roberts Dairy failed to file a timely motion to vacate as required, a dispositive election. As a result, summary judgment in favor of the Union is required, and the Company's Cross-Motion for Summary Judgment is dismissed as moot.

**E. Court Order of Enforcement**

The Court has determined that the Amended Motion of Summary Judgment filed by Local 387 will be granted. Accordingly, the Court further orders enforcement of the arbitration awards rendered by the Committee following the March 24, 2003, grievance hearings. In its motion, Local 387 requests the Court order reinstatement of David, payment of back pay and benefits to David and Stuart, pension contribution for David, payment of interest on all back pay and benefits, and payment to Local 387 for court costs and reasonable attorneys' fees.

The record does not contain specific economic awards for David and Stuart, and the claim support provided in this record provides an inadequate basis for determination

of appropriate amounts. The matter must be remanded for clarification of the amount of any economic losses.

Attorneys' fees may be awarded where a party lacked substantial basis for refusing to comply with an arbitration award or where a party acted in bad faith. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of America v. United Farm Tools, Inc., Speedy Mfg. Div., 762 F.2d 76, 77 (8th Cir. 1985). Such a posture may be inferred from a party's failure to move to vacate the award. Id. While the Court herein finds the Company was required to move to vacate the award, that legal requirement is not dispositive of the attorney fee question. The Company reacted to a transparently unfair grievance proceeding by concluding the proceeding was so infirm as to be void, and on that basis declined either to comply with or seek to vacate the award. While this Court concludes that posture was wrong on the law, the Court declines to find the Company was acting without a substantial basis for refusing to comply or otherwise in bad faith. The claim for attorney fees will be denied.

## CONCLUSION

The Court finds the failure of Roberts Dairy to file a motion to vacate within 90 days precludes it from raising the asserted defenses in this action. Consequently, the Amended Motion for Summary Judgment filed by Local 387 (Clerk's No. 17) is **granted**. The Cross-Motion for Summary Judgment filed by Roberts Dairy (Clerk's No. 27) is **denied**. Accordingly,

**IT IS ORDERED** that the awards of the grievance panel be and are hereby **enforced**.

**IT IS FURTHER ORDERED** that Darryl David be **reinstated**.

**IT IS FURTHER ORDERED** that the matters are **remanded** to the Joint State Committee for the clarification of economic losses that are the subject of the awards, and for entry of awards based upon those losses.

**IT IS FURTHER ORDERED** that Plaintiff's demand for attorneys' fees is **denied**.

Dated this 30th day of March, 2004.

JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT