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

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EAGLE IRON WORKS,	*	
	*	4-01-CV-90159
Plaintiff,	*	
,	*	
v.	*	
	*	
INTERNATIONAL ASSOCIATION OF	*	
MACHINISTS AND AEROSPACE	*	
WORKERS, LOCAL LODGE #254,	*	MEMORANDUM OPINION
	*	AND ORDER
Defendant.	*	
	*	

The Court has before it Defendant's Motion for Summary Judgment. Defendant argues that the arbitrator's award in this matter should be enforced and that it should be awarded attorney fees. Plaintiff resists Defendant's motion, arguing that the arbitrator's decision should not be upheld. For the reasons set forth below, the Court upholds the arbitrator's award but does not grant Defendant attorney fees.

## I. BACKGROUND

The Defendant, International Association of Machinists and Aerospace Workers, Local Lodge #254 (the "Union"), is recognized by the Plaintiff, Eagle Iron Works (the "Company"), as the exclusive bargaining representative for certain employees of the Company at its facility in Des Moines, Iowa. The Company and the Union are parties to a collective bargaining agreement with a duration from December 1, 1998 through November 30, 2001. The collective bargaining agreement includes, among other provisions, a procedure for processing and adjusting grievances which culminates in arbitration and is declared in the agreement to be final and binding on the

parties.

During the term of the collective bargaining agreement, a dispute arose concerning vacation entitlement. Randy Gooch, the Grievant, alleged that he was eligible, based upon his years of service, to move to the next level of vacation benefits under the collective bargaining agreement. The Grievant began his employment with the Company on April 24, 1989.

However, since then he had been laid off several times.

In 1999, the Grievant claimed he was entitled to a three week vacation pursuant to Section 12.2 of the collective bargaining agreement because he had worked for the Company for ten years. The Company denied the Grievant's claim, asserting that his date of hire was not the proper date to use in determining eligibility for a vacation. The Company recalculated the Grievant's seniority date to reflect the Grievant's lay-offs to establish what it referred to as the "vacation eligibility date." The employer's calculation resulted in a vacation eligibility date of April 24, 1991. As a result, the Company told the Grievant that he was not entitled to a three week vacation until 2001.

The Grievance was heard by Arbitrator Jay D. Grenig, who issued an Award dated December 16, 2000 finding in favor of the Union and the Grievant. The Company refused to abide by Arbitrator Grenig's Award and brought this action to have it vacated. The Union has counter-claimed to have the Award affirmed and enforced.

#### II. DISCUSSION

Defendant requests that the Arbitrator Grenig's Award should be affirmed and enforced and that it be awarded attorney fees for Plaintiff's bad faith in failing to abide by the award and bringing this action. The Court finds that the arbitrator's award should be enforced. However, in

making this finding, the Court also finds that Defendant's interpretation of the Collective bargaining agreement and Arbitrator Grenig's Award is not so far-fetched as to constitute bad faith and justify an award of attorney fees.

## A. Arbitrator Grenig's Award

"The scope of judicial review of arbitration awards under collective-bargaining agreements is extremely limited." *United Food and Commercial Workers, AFL-CIO, CLC, Local No.* 88 v. Shop 'N Save Warehouse Foods, Inc., 113 F.3d 893, 894 (8th Cir. 1997). In Shop N' Save Warehouse Foods, the Eighth Circuit, quoting the Supreme Court, summarized this review as follows:

[T]he courts play only a limited role when asked to review the decision of an arbitrator. The courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract . . . . As long as the arbitrator's award "draws its essence from the collective bargaining agreement," and is not merely "his own brand of "industrial justice," the award is legitimate.

\* \* \*

Courts thus 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. To resolve disputes about the application of a collective-bargaining agreement, an arbitrator must find facts and a court may not reject those findings simply because it disagrees with them. The same is true of the arbitrator's interpretation of the contract. The arbitrator may not ignore the plain language of the contract; but the parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground that the arbitrator misread the contract.

Id. at 894-895 (quoting *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987) (internal quotations omitted)). Thus, "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." *Id.* (internal quotations omitted). And "in determining whether an arbitrator has exceeded his authority, the agreement

must be broadly construed with all doubts being resolved in favor of the arbitrator's authority." *Id.* (internal quotations omitted).

Arbitrator Grenig focused on three parts of the collective bargaining agreement: (1)

Sections 12.0 through 12.4, which set forth with the number of weeks of vacation to which an employee is entitled; (2) Section 12.5, which sets forth the situations where an employee is entitled to full vacation pay, when the vacation pay must be prorated, and when an employee is not entitled to vacation pay; and (3) Section 12.6, which specifies when an employee is deemed to have earned his or her vacation. Those sections provide:

- 12.0 Each Employee covered by this Agreement who has worked continuously for the Employer for a period of one (1) year or more shall be entitled to one (1) week of vacation at his/her regular rate of pay for forty (40) hours.
- 12.1 Each Employee covered by this Agreement who has worked continuously for the Employer for a period of three (3) years or more shall be entitled to two (2) weeks of vacation at his/her regular rate of pay for eighty (80) hours.
- 12.2 Each Employee covered by this Agreement who has worked continuously for the Employer for a period of ten (10) years or more shall be entitled to three (3) weeks of vacation at his/her regular rate of pay for one hundred twenty (120 hours.
- 12.3 Each Employee who has worked continuously for a period of twenty (20) years or more shall be entitle to four (4) weeks vacation at his/her regular rate of pay for one hundred sixty (160) hours.
- 12.4 Each Employee who has worked continuously for a period fo thirty (30) years or more shall be entitled to four (4) weeks vacation at his/her regular rate of pay for one hundred sixty (160) hours.
- 12.5 In order to qualify for full vacation pay, an Employee must have worked at least sixteen hundred (1600) regular hours during the previous year. If an employee worked less than sixteen hundred (1600) hours, but more than eight hundred (800) hours in the previous year, he or she shall be entitled to one-tenth (1/10) of full vacation pay for each one hundred sixty (160) regular hours worked. An Employee who worked less than eight hundred (800) hours in the previous year will not qualify for vacation pay. A year in which the Employee works less than eight hundred (800) hours will not be considered a year worked for the purposes of vacation entitlement. Paid vacation and holiday hours, however, will be considered time worked

- for purposes of this paragraph.
- 12.6 An Employee is laid off, he/she will receive his/her prorated vacation pay at the time of layoff. An Employee on layoff will not accrue or earn any vacation eligibility.

Arbitrator Grenig also referenced Articles 6 and 8 of the Collective bargaining agreement.

Article 6, entitled, "Seniority," provides, in pertinent part, as follows:

Each Employee will have seniority standing in the plan and in the classification in which the Employee is working. Plant seniority will equal the Employee's total length of service with the Employer in the plant, dating from the first day of the last continuous employment.

Article 8, entitled, "Loss of Seniority Rights," provides, in pertinent part, that "[a]n Employee will cease to have any seniority and to be on any seniority list if . . . [t]he Employee is laid off for a period longer than three (3) years.

In addition to looking at the collective bargaining agreement, Arbitrator Grenig relied heavily upon a previous arbitration award. That award was a December 5, 1995 Arbitration Award by Arbitrator John R. Thornell, which dealt with the same issue but involving the 1984-1987 Collective bargaining agreement. In that award, the Union had argued that a layoff did not constitute a break in seniority and that an employee's vacation entitlement is based on his or her seniority date. The Company argued that the language of the vacation article of the contract, specifically the phrase "who has worked continuously," means that an employee who is laid off has an interruption in his or her working time for the purpose of computing vacation benefits.

Arbitrator Thornell agreed with the Union. He ruled that the phrase "worked continuously" refers to an employee's seniority, which determines his or her vacation entitlement. Therefore, he reasoned, when looking at an employee's seniority to determine his vacation entitlement, the employee must have "worked continuously" or been "continuously

employed" without a break in his seniority. A layoff then did not constitute a break in seniority unless so stated in Article 8. In addition, Arbitrator Grenig stated that the Company's interpretation would lead to a harsh result and one not called for by the contract. He concluded that because the Grievant's seniority had not been broken under Article 8, the Grievant was not subject to any diminution in his vacation entitlement.

Since Arbitrator Thornell's Award, however, some of the language of the collective bargaining agreement has changed. Most importantly, the parties changed the language in Section 12.5. In the collective bargaining agreement at issue in Arbitrator Thornell's Award, Section 12.5 provided:

If an employee is laid off after having worked past his/her anniversary date, he/she will receive his/her year's vacation pay plus a pro rate [sic] vacation pay at the time of his/her layoff, based on the amount of time elapsed between his/her anniversary date and the date of layoff.

In the collective bargaining agreement at issue in this case, Section 12.5 outlines a system for prorating vacation time if an employee works less than 1600 hours but more than 800 hours in the previous year and states that if an employee works less than 800 hours in the previous year, he or she will not qualify for vacation pay. It then states, "A year in which the Employee works less than eight hundred (800) hours will not be considered a year worked for the purposes of vacation entitlement." Article 8 also changed, but that change has no effect here.

Nonetheless, Arbitrator Grenig ruled that an employee's entitlement to vacation was still determined by his or her seniority date. Arbitrator Grenig noted the change in Section 12.5. However, he also noted that Section 12.2 and Article 6 had not changed, and that Article 8 had not significantly changed. From this, he deduced that the language of the Collective bargaining

agreement was ambiguous, and ambiguous language should be construed against the drafter, in this case the Company, and construed to avoid a harsh or absurd result. Like Arbitrator Thornell, Arbitrator Grenig thought that delaying an employee's vacation entitlement in the future by one year would be a harsh result.

Arbitrator Grenig then went on to explain other concerns. He stated that the Company's interpretation, that the amended language in Section 12.5 means exactly what it says and governs an employee's vacation eligibility, would be inconsistent with Article 8, which provides that an employee loses his or her seniority only if he or she is laid off for a period longer than three years. This, he thought, was particularly significant because Arbitrator Thornell had construed the words "worked continuously" in Section 12.2 as referring to seniority as determined by Articles 6 and 8. He stated that this would, in effect, ignore the word "continuously" as used in Sections 12.0 through 12.4 and would fail to give effect to all the words used by the parties'. Lastly, Arbitrator Grenig noted that further support for his construction is found in the fact that the amended language in Section 12.5 is found in the section governing the prorating of vacation pay and not in the sections governing the weeks of vacation eligibility. In the end, he essentially concurred with Arbitrator Thornell, ruling that despite the changes to the Collective bargaining agreement, an employee's vacation entitlement is determined by his anniversary date unless his seniority had been broken under Article 8.

The Company makes three arguments as to why this Court should vacate Arbitrator Grenig's Award. First, it argues that Arbitrator Grenig's Award conflicts with the express terms of the collective bargaining agreement, because it ignores the sentence in Section 12.5 which states that "[a] year in which the Employee works less than eight hundred (800) hours will not be

considered a year worked for the purposes of vacation entitlement." Second, it argues that Arbitrator Grenig's is not "rationally supported by or derived from" the collective bargaining agreement, because it relies upon a previous arbitration award that dealt with different language. Third, the Company argues that requiring an employee to have worked a certain number of hours in a year in order for that employee to be credited with a "year of service" for the receipt of some particular benefit is not a harsh result. For this last argument, the Company cites as examples, inter alia, the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1052(3)(A), which defines a "year of service" as "a 12-month period during which the employee has not less than 1,000 hours of service," and the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2611(2)(A)(ii), which defines an "eligible employee" as an employee who has been employed "for at least 1,250 hours of service with such employer during the previous 12-month period."

The Court cannot say that Arbitrator Grenig's Award failed to draw its essence from the collective bargaining agreement. The Eighth Circuit has recognized that "[a]n award interpreting a collective [bargaining] agreement usually becomes a binding part of the agreement and will be applied by arbitrators thereafter." *Trailways Lines, Inc. v. Trailways, Inc. Joint Council*, 807 F.2d 1416, 1425 (8th Cir. 1986) (citation omitted). The Eighth Circuit has also stated that a court cannot find that an arbitrator failed to construe an agreement simply because the court believes the language of the agreement is "plain, unambiguous, and not susceptible to the particular construction given by the arbitrator." *See George A. Hormel & Co. v. United Food & Commercial Workers Local 9, AFL-CIO*, 879 F.2d 347, 350 (8th Cir. 1989). It stated that such would result in a reversal based upon a court's perception that the arbitrator committed serious error in his interpretation, which is forbidden by the Supreme Court's decision in *United* 

Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36 (1987). Id.

This is not a case in which the arbitrator ignored unambiguous language in the collective bargaining agreement to arrive at a desired result. *See*, *e.g.*, *Excel Corp. v. United Food and Commercial Workers Int'l Union, Local 431*, 102 F.3d 1464 (8th Cir. 1996); *Fairview Southdale Hospital v. Minnesota Nurses Ass'n*, 943 F.2d 809 (8th Cir. 1991). In this case, Arbitrator Grenig found that an ambiguity existed between Arbitrator Thornell's interpretation of the phrase "worked continuously" and the added language in Section 12.5 that the Company relies on now. Arbitrator Thornell interpreted "worked continuously" as referring to an employee's seniority, which determines that employee's vacation entitlement. That interpretation of "worked continuously" and the language at issue in 12.5 cannot be read together. In fact, Plaintiff does not even attempt to explain how they can be read together.

Nor did Arbitrator Grenig completely misapply Arbitrator Thornell's Award in finding the existence of an ambiguity. Arbitrator Thornell's Award rested largely on Articles 6 and 8, which establish seniority and loss of seniority rights, and Section 12.0 through 12.4, which outline how may years an employee must work in order to qualify for one, two, three, four, or five weeks of vacation entitlement. These provisions did not change significantly. Therefore, it is not simply a matter of discarding Arbitrator Thronell's Award in lieu of changes in the collective bargaining agreement. Arbitrator Grenig was reasonable in giving Arbitrator Thornell's interpretation of "worked continuously" precedential weight. Moreover, as Arbitrator Grenig pointed out, the added language in Section 12.5 that appears to alter the number of weeks of vacation to which an employee is entitled is found in the section of the agreement that governs the proration of vacation pay and not in the sections governing the weeks of vacation eligibility.

In sum, whether Arbitrator Grenig's reading of the collective bargaining agreement was correct is not for this Court to decide. Rather, it is enough that Arbitrator Grenig could find that there was an ambiguity and that he analyzed all the pertinent provisions and materials in resolving that ambiguity.

The Court does, however, agree to some extent with the Plaintiff that its interpretation would not produce a harsh or absurd result. Plaintiff's examples from ERISA and the FMLA demonstrate that it is neither harsh nor absurd to require a certain number of hours in a year in order to qualify for a benefit. Even putting the harsh or absurd finding aside though, Arbitrator Grenig was still within his purview in resolving the ambiguity against the drafter. The Court therefore will not vacate Arbitrator Grenig's Award.

## **B.** Attorney Fees

In addition to summary judgment, Defendant also requests attorney fees for having to defend this action. It claims that Plaintiff cannot demonstrate any reason, let alone a good reason, for vacating Arbitrator Grenig's Award. It claims that any claims or assertions made by Plaintiff here are simply an attempt to either rehash arguments previously made to the arbitrator or make arguments that should have been made to the arbitrator.

"A court may 'assess attorney fees against a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Int'l Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. United Farm Tools, Inc.*, 762 F.2d 76, 77 (8th Cir. 1985). "An unjustified refusal to abide by an arbitrator's award may constitute bad faith for the purpose of awarding attorneys' fees." *Id.* Although the Court has rejected Plaintiff's arguments here, it cannot say that they were not without some justification. This is the case because of the

explicit language in Section 12.5 that could certainly appear to bear out the Company's interpretation of the collective bargaining agreement. Therefore, the Court will not award Defendant attorney fees.

## III. CONCLUSION

Defendant's Motion for Summary Judgment (Clerk's No. 5) is granted in part and denied in part. The collective bargaining agreement shall be enforced. However, Defendant shall not receive attorney fees for its defense of this action.

## IT IS SO ORDERED.

Dated this \_\_\_\_26th\_\_\_ day of November, 2001.

ROBERT W. PRATT
U.S. DISTRICT JUDGE