

Arbitration in the Fifth - August 2020

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PRACTICES Litigation

August opinions offer multiple examples of courts considering the objection that an arbitrator exceeded his or her authority. In KBFA Inv. Group, Inc. v. FedEx Ground Package Sys., Inc., the Fifth Circuit repeated the exacting standard for review of the objection. Also, in decisions arising from collective bargaining agreement arbitrations, the Northern and Southern Districts of Texas described what does and does not amount to an arbitrator exceeding authority. See Johns Manville v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union and Kinder Morgan, Inc. v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union.

Opinions of the Fifth Circuit

ATOM Instrument Corp. v. Petroleum Analyzer Co., L.P., 19-20151, 2020 WL 4557635 (5th Cir. Aug. 7, 2020). Order applying arbitration award that had been confirmed in 2007 affirmed. Evidence insufficient to support argument that product at issue relied on trade secrets found to be protected in prior arbitration award.

Colonial Oaks Assisted Living Lafayette, L.L.C. v. Hannie Dev., Inc., 19-30995, 2020 WL 5015453 (5th Cir. Aug. 25, 2020). Order dismissing claim affirmed. Buyers prohibited from circumventing arbitration and exclusive remedy provisions of asset purchase agreement by seeking recovery outside of arbitration through excluded remedies. Further, res judicata applied to bar claim that was not, but could have been, asserted in a previously concluded arbitration.

KBFA Inv. Group, Inc. v. FedEx Ground Package Sys., Inc., 19-51068, 2020 WL 5031931 (5th Cir. Aug. 24, 2020) (per curiam). Order confirming award affirmed. Arbitrator did not exceed authority. "Even if the arbitrator erred, clearly erred, or grossly erred in his interpretation, the award must be upheld unless 'it was so unfounded in reason and fact, so unconnected with the wording and purpose of the contract as to manifest an infidelity to the obligation of an arbitrator.'"

Opinions of United States District Courts

Motions to Compel Arbitration

Hanna v. J.P. Morgan Chase & Co., 19-887-SDD-EWD, 2020 WL 4983065 (M.D. La. Aug. 24, 2020). Motion to compel granted. Plaintiff contended that defendant failed to present evidence that he actually signed the agreement. Regardless of whether plaintiff signed the agreement, under Louisiana law plaintiff accepted the conditions of his employment by beginning and continuing his employment. Physical characteristics of the arbitration agreement demonstrated that this was not a contract of adhesion and agreement was not one-sided.

Sullivan v. Feldman, CV H-20-2236, 2020 WL 4734982 (S.D. Tex. Aug. 14, 2020), replacing withdrawn opinion 2020 WL 4451069 (Aug. 3, 2020). Motion to compel granted. Signatories, along with "affiliates" on behalf of which they signed, compelled to arbitrate in proceedings that were already underway at the time of the court's order. In deciding a motion to compel, the court's inquiry

is limited to whether the parties agreed to arbitrate and if there are external legal constraints that prevent arbitration. The court cannot consider whether arbitrator was properly appointed on a motion to compel. The agreement delegated resolution of disputes regarding appointment to the arbitrator.

CHG Hosp. Houston LLC v. Blue Cross Blue Shield, CV H-20-0718, 2020 WL 4904639 (S.D. Tex. Aug. 20, 2020). Motion to compel granted. Arbitration agreement did not impair plaintiff's right to recover attorneys' fees under the Texas Insurance Code. If the clause impaired statutory substantive rights and remedies, the limitation could be severed from the arbitration agreement based on a severability clause. An agreement that exempts certain disputes from arbitration does not clearly and unmistakably delegate arbitrability to the arbitrator for disputes that fall within the exception. The arbitrability of disputes that do not fall within the exception, however, are still delegated.

Motion to Confirm/Vacate Award

Psara Energy, Ltd. v. Space Shipping, Ltd., 1:18-CV-00178-MAC, 2020 WL 4574606 (E.D. Tex. July 17, 2020), report and recommendation adopted 2020 WL 4575961 (E.D. Tex. Aug. 6, 2020). Motion to confirm granted. Order adopting report and recommendation of magistrate that included confirmation of New York Convention award. Merely arguing arbitrability to an arbitrator does not indicate a clear willingness to arbitrate that issue, however agreeing that the panel lacks jurisdiction over a claim indicates clear and unmistakable agreement to be bound by that ruling. Claims not covered by an arbitration clause remain within the jurisdiction of the court.

Johns Manville v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, 3:19-CV-00788-E, 2020 WL 5057408 (N.D. Tex. Aug. 26, 2020). Motion to confirm granted and to vacate denied. Arbitrator did not exceed his authority. The arbitrator was required to construe what was meant by the undefined term "just cause," and therefore the award was a matter of contract interpretation within the arbitrator's authority. As to a public policy objection to an award arising from a collective bargaining agreement (CBA), the question is not whether the employee's conduct violates public policy, but whether the CBA violates public policy.

Kinder Morgan, Inc. v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, 4:19-CV-01677, 2020 WL 5097161 (S.D. Tex. Aug. 13, 2020), report and recommendation adopted, 2020 WL 5096943 (S.D. Tex. Aug. 28, 2020). Motion to vacate granted and to confirm denied. Agreement provided that "jurisdiction and authority of the arbitrator shall be confined to the interpretation and/or application of the express provisions" of the parties' CBA. The award decided the dispute based on promissory estoppel in relation to statements made during negotiation of the CBA, and the award specifically disclaimed expressing any opinion on the interpretation of the CBA. Arbitral action contrary to express contractual provisions will not be respected.

Humble v. Arctas Mariah Energy, LLC, 620CV00402ADAJCM, 2020 WL 4480818 (W.D. Tex. Aug. 4, 2020). Motion to modify award denied. Declaratory judgment action construed as seeking modification of an award was barred by limitation applicable to action to modify an award.

Other Arbitration-Related Issues

Reticulum Mgmt., LLC v. Dean, 19-31232 (SGJ), 2020 WL 4519039 (Bankr. N.D. Tex. Aug. 4, 2020). Motion for summary judgment as to collateral estoppel denied. Interim award does not support collateral estoppel. In relation to bankruptcy discharge analysis, application of collateral

estoppel requires that arbitrators' make specific subordinate findings of fact as to dischargeability issues.

Shaffer, Chap. 7 Trustee v. Fed. Inc. Co., 3:19-CV-930-DPJ-FKB, 2020 WL 4677401 (S.D. Miss. Aug. 12, 2020). Motion to stay action against insurer granted. An award had been issued against the insured. Claimant sought confirmation of that award, and subsequently filed this action seeking a declaration that respondent's insurance policy covered the award. A stay to allow the confirmation proceeding to be resolved was justified to conserve judicial resources.