

Arbitration Law Memo - July 2023

LawMemo - First in Employment Law

***** Arbitration – Individual contracts *****

- AL - An employee's tort claims were still subject to arbitration, regardless of when her employment with the employer ended.
- TX - The Texas Arbitration Act requires a stay of litigation proceeding pending arbitration.
- TX - Employee fails to show arbitration agreement was unconscionable due to the costs associated with the arbitration.
- CA - A carve out provision in the parties' agreement provides claims under PAGA are not arbitrable.
- NY - A tenured professor's termination was disproportionate to his unblemished record of 19 years.

***** Arbitration – Collective bargaining agreements *****

- NY - Exempt employee is terminable at-will.
- 4th - Arbitrator failed to determine whether the employer had a reasonable basis for discharging employee.
- 10th - The Collective Bargaining Agreement precluded hospital's decision regarding staffing levels from being arbitrated.
- NH - An arbitrator commits a plain mistake in awarding backpay to an employee.
- RI - Employee fails to present any argument grounded in specific facts or law to support his claim.
- 4th - Railroad conductor's Title VII race discrimination claim was subject to mandatory arbitration under the Railway Labor Act.

***** Arbitration – Individual contracts *****

AL - An employee's tort claims were still subject to arbitration, regardless of when her employment with the employer ended.

Women's Care Specialists v. Potter (Alabama 05/19/2023)

<http://case.lawmemo.com/al/womens.pdf>

The employer and three of its employees challenged the trial court's decision to deny their motions to compel arbitration against Potter. The Alabama Supreme Court reversed and remanded the trial court's order. The consolidated appeals arose out of an employment dispute between Potter and her former employer and out of a dispute between Potter and three of her former colleagues. Potter argued that only her breach of contract claim against the employer was subject to arbitration and that her tort claims against the employer and her three colleagues were not subject to arbitration because they arose after her employment with the employer ended. The court found the breach of contract claim, which relates to her employment with the employer was subject to the

arbitration provision in the parties' amended employment agreement. As for the tort claims, the court concluded that Potter's tort claims were also related to Potter's employment with the employer. The court found Potter and the employer expressly agreed in the employment agreement that any obligations they owed to one another—including the obligation to arbitrate any disputes related to Potter's employment—would not terminate upon the expiration or termination of the agreement. Thus, Potter's tort claims against the employer and her three former colleagues were still subject to arbitration regardless of when her employment ended.

TX - The Texas Arbitration Act requires a stay of litigation proceeding pending arbitration.

Hoffman v. Baker Hughes Co (Texas Ct App 06/01/2023)
<http://case.lawmemo.com/tx/hoffman.pdf>

A dispute occurred between Hoffman and his employer regarding a breathalyzer test that resulted in the employer deciding to terminate Hoffman. The employer sought to compel arbitration under a mandatory arbitration agreement. The trial court compelled arbitration. The Texas Court of Appeals affirmed the trial court's order compelling arbitration but reversed the trial court's order dismissing the case with prejudice for further proceedings. The issue of whether Hoffman's claim was subject to arbitration was a matter to be determined by the arbitrator. However, the Texas Arbitration Act provides that an order compelling arbitration must include a stay of the underlying litigation. After arbitration, the trial court may be needed to affirm or modify an order.

TX - Employee fails to show arbitration agreement was unconscionable due to the costs associated with the arbitration.

Houston AN USA v. Shattenkirk (Texas 05/26/2023)
<http://case.lawmemo.com/tx/HoustonANUSA.pdf>

Shattenkirk sued the employer, alleging his termination was due to discrimination and in retaliation for his reporting of racist comments. The Supreme Court of Texas reversed the Court of Appeal's judgment holding the parties' arbitration agreement was unconscionable. As part of the onboarding process Shattenkirk electronically signed and accepted an arbitration agreement requiring arbitration of all claims and disputes connected with his employment, including termination and discrimination claims. Shattenkirk alleged he heard one of his superiors make racist comments and reported the incident to a senior director. Shattenkirk was then placed on a PIP and eventually terminated. The lower courts found the arbitration agreement was unconscionable and unenforceable because the costs associated with the arbitration were so excessive they would foreclose Shattenkirk from pursuing his claims. The court found that Shattenkirk failed to present evidence that increased cost associated with arbitration, compared to litigation, foreclosed him from pursuing his claims. Shattenkirk argued that because the

arbitration agreement failed to allocate arbitration fees to the employer, the agreement on its face rendered the arbitral forum inaccessible. However, the court found Shattenkirk misunderstood the burden of proof and read language into the agreement that was simply not there. Further, Shattenkirk argued he would be responsible for splitting the costs of arbitration. The court found the agreement was silent on the arbitration costs. The court further noted, "the Supreme Court's holding that an arbitration agreement's mere silence [concerning] costs and fees, by itself, is a plainly insufficient basis for invalidating" an arbitration agreement."

CA - A carve out provision in the parties' agreement provides claims under PAGA are not arbitrable.

Duran v. EmployBridge (California Ct App 05/30/2023)
<http://case.lawmemo.com/ca/duran4.pdf>

Duran sued the employer to recover civil penalties under PAGA for labor code violations suffered. The California Court of Appeal affirmed the trial court's denial of the employer's motion to compel arbitration. The trial court denied the employer's motion because it found the issues presented by Duran were not subject to arbitration. The contract provided, "claims for unemployment compensation, claims under the National Labor Relations Act, claims under PAGA, claims for workers compensation benefits and any claim that is non-arbitrable under applicable state or federal law are not arbitrable under this agreement." Thus, the court concluded the contract language was unambiguous and provided that claims under PAGA were not arbitrable.

NY - A tenured professor's termination was disproportionate to his unblemished record of 19 years.

O'Brien v. Yonkers City Sch Dist (New York App Div 06/07/2023)
<http://case.lawmemo.com/ny/obrien1.htm>

O'Brien appealed his termination. The New York Appellate Division modified the hearing officer's order by deleting the provision denying O'Brien's petition to vacate the penalty of termination. O'Brien was a tenured teacher working for the employer. O'Brien was charged with conduct unbecoming of a teacher, misconduct, and insubordination for allegedly restraining a female student who was trying to get past him. The parties proceeded to arbitration, and after a hearing, O'Brien was terminated. On appeal, O'Brien sought to vacate the penalty of termination of his employment. The court found that there was a rational basis and evidentiary support that O'Brien committed the conduct of inappropriately restraining a female student who was trying to get past him. However, the court found O'Brien otherwise had an unblemished record of approximately 19 years as a teacher with the employer. Therefore, the court found the penalty of termination of employment was so disproportionate to the offense as to be shocking to one's sense of fairness.

***** Arbitration – Collective bargaining agreements *****

NY - Exempt employee is terminable at-will.

Teamsters Local 445 v. Monroe (New York 05/23/2023)

<http://case.lawmemo.com/ny/teamsters.pdf>

The employer challenged the trial court's decision to grant the union's motion to compel arbitration. The New York Court of Appeals reversed and denied the union's motion to compel arbitration. The union filed a grievance with the employer after it terminated an employee without just cause. The parties entered into a CBA that provided for-cause termination protections to certain exempt-class employees. The trial court denied the employer's motion to dismiss, concluding that neither law nor public policy prohibited the parties from bargaining tenure protections for an exempt employee or precluded the employee from grieving or arbitrating the termination. The court found that affording for-cause termination protections to an exempt class employee would violate a statute, decisional law, or public policy. First, the court explained, that its decision was consistent with the legislature's omission of exempting employees from the tenure protections outlined in Civil Service Law §75 and §76. Second, the Civil Service Law evinced the legislature's intent to closely guard exempt class protections. The legislature's strict regulation of the exempt class suggested an intent to ensure that no position is misclassified as exempt. The court found the CBA contravened that intent by altering an essential attribute of one exempt class position: at-will terminability. Third, the court found public policy weighed against enforcement of the CBA's termination protections. The court noted, "considering the nature of positions classified as exempt, appointing officers must be free to choose their employees as they please." The employer was, therefore, free to terminate the employee without cause, and the union's challenge to the employee's termination was not arbitrable.

4th - Arbitrator failed to determine whether the employer had a reasonable basis for discharging employee.

Advantage Veterans Services v. Steel Workers (4th Cir 06/15/2023)

<http://case.lawmemo.com/4/advantage.pdf>

The employer challenged an arbitration award in favor of the union stemming from the discharge of a union-represented employee under the Labor Management Relations Act. The trial court determined that the arbitrator correctly applied the just cause analysis. The Fourth Circuit reversed. The arbitrator failed to explicitly make the required determination that the employer had a reasonable basis to discharge the employee, as was required under the explicit terms of the parties' collective bargaining

agreement. This determination was a clear and unambiguous procedural requirement, and the arbitrator's oversight required vacating the arbitration award.

10th - The Collective Bargaining Agreement precluded hospital's decision regarding staffing levels from being arbitrated.

Nurses Organizing Committee v. Midwest Div MMC (10th Cir 06/13/2023)
<http://case.lawmemo.com/10/nurses.pdf>

The nurses union filed a grievance over the hospital's new staffing grids and sought arbitration under the grievance procedure in the parties' collective bargaining agreement ("CBA"). The employer refused to process the grievance on the basis that it challenged the hospital's implementation of a staffing plan, which was not arbitrable under the CBA. The union sued the employer seeking to compel arbitration under Section 301 of the Labor Management Relations Act ("Act"). The trial court granted summary judgment in favor of the employer. The Tenth Circuit affirmed. The union's grievance could not be arbitrated because the explicit text of the CBA stated that the hospital's decisions regarding staffing levels and/or ratios were management rights and would not be subject to the grievance and arbitration process.

NH - An arbitrator commits a plain mistake in awarding backpay to an employee.

Portsmouth v. Portsmouth Ranking Officers Assoc (New Hampshire 06/07/2023)
<http://case.lawmemo.com/nh/Portsmouth.pdf>

The employer appealed the trial court's judgment denying its request to modify, correct, or vacate an arbitrator's award of backpay to Goodwin. The Supreme Court of New Hampshire reversed in part and vacated the trial court's confirmation of the arbitrator's award and remanded. Goodwin was terminated by the employer after it found Goodwin fostered an inappropriate relationship with a 92-year-old woman and unduly influenced her to leave the majority of her estate to him. The employer argued the arbitrator committed plain mistake because she failed to correctly apply the after-acquired-evidence doctrine in determining the amount of backpay award. After acquired evidence is evidence of an employee's misconduct discovered by the employer after it has terminated the employee for an unlawful reason, which is so severe that the employer would have terminated the employee on those grounds alone had it known of the misconduct at the time of the discharge. Employers may introduce such evidence in the defense of HYPO: wrongful or unlawful termination claims to bar or limit the employee's recovery. The court found the arbitrator committed a plain mistake. As a matter of law, the probate decision of August 2015 was not a basis for Goodwin's termination, which occurred on June 24, 2015. Because the after-acquired evidence was not used to justify Goodwin's termination, but only to mitigate his remedy, the arbitrator misapplied the law to the facts when she treated the probate decision as a second ground for Goodwin's termination and determined that he was entitled to Loudermill protection on that basis.

Therefore, the arbitrator relied in part on an erroneous legal conclusion that prevented her free and fair exercise of judgment regarding the backpay award.

RI - Employee fails to present any argument grounded in specific facts or law to support his claim.

Jenkins v. East Providence (Rhode Island 06/06/2023)

<http://case.lawmemo.com/ri/jenkins.pdf>

Jenkins appealed pro se the trial court's decision to deny his petition of writ of mandamus and dismissal of his complaint. The Supreme Court of Rhode Island affirmed the trial court's decision. The employer terminated Jenkin's employment, and the parties signed a memorandum of agreement. The agreement contained various provisions, including a provision explaining the enforcement of the agreement was subject to the grievance and arbitration provisions of the CBA. The trial court found that because the agreement was subject to the grievance and arbitration procedures, the court lacked the authority to proceed. Also, the trial court found that Jenkins failed to establish the required elements to entitle him to a writ of mandamus. The court found that although Jenkins submitted a memorandum of law to the court, he failed to provide any meaningful discussion of the issues on appeal as required by Article I, Rule 12A of the Supreme Court Rules of Appellate Procedure. The court noted, "simply stating an issue for appellate review, without a meaningful discussion thereof or legal briefing of the issues, does not assist the court in focusing on the legal questions raised, and therefore constitutes a waiver of that issue." Jenkins failed to present any argument grounded in specific facts or law to support his claim the trial court erred in denying his petition for writ of mandamus and dismissing his complaint. Further, the record revealed that Jenkin's arguments were not raised in the trial court, and therefore waived.

4th - Railroad conductor's Title VII race discrimination claim was subject to mandatory arbitration under the Railway Labor Act.

Polk v. Amtrak (4th Cir 04/26/2023)

<http://case.lawmemo.com/4/polk.pdf>

Polk, a railroad conductor, sued Amtrak for racial discrimination in violation of Title VII. The trial court granted Amtrak's motion to dismiss on the grounds that the Railway Labor Act ("RLA") precluded Polk's Title VII claim because that claim would require the court to interpret the rights within the collective bargaining agreement ("CBA") between Polk's union and Amtrak, and therefore should be referred to mandatory arbitration. The Fourth Circuit affirmed. A federal Title VII claim can present itself as a minor dispute and could be subject to the RLA's arbitral requirement for mandatory arbitration of such disputes. Polk's Title VII claim was a minor dispute because it required an interpretation of the CBA as it focused on whether Amtrak violated the CBA or properly

applied it. Additionally, requiring arbitration of Polk's Title VII claim did not render her rights ineffective.

Find us on [LinkedIn](#) for more content.

Editor: James Baez, James@LawMemo.com. Copyright by LawMemo, Inc., PO Box 9182, Portland, OR 97207, (503) 227-1500. We are sending *Arbitration Law Memo* monthly. To unsubscribe, reply to this email with the word "REMOVE" in the subject line.

Arbitration Law Memo - July 2023

LawMemo - First in Employment Law

***** Arbitration – Individual contracts *****

- [AL - An employee's tort claims were still subject to arbitration, regardless of when her employment with the employer ended.](#)
- [TX - The Texas Arbitration Act requires a stay of litigation proceeding pending arbitration.](#)
- [TX - Employee fails to show arbitration agreement was unconscionable due to the costs associated with the arbitration.](#)
- [CA - A carve out provision in the parties' agreement provides claims under PAGA are not arbitrable.](#)
- [NY - A tenured professor's termination was disproportionate to his unblemished record of 19 years.](#)

***** Arbitration – Collective bargaining agreements *****

- [NY - Exempt employee is terminable at-will.](#)
- [4th - Arbitrator failed to determine whether the employer had a reasonable basis for discharging employee.](#)
- [10th - The Collective Bargaining Agreement precluded hospital's decision regarding staffing levels from being arbitrated.](#)
- [NH - An arbitrator commits a plain mistake in awarding backpay to an employee.](#)
- [RI - Employee fails to present any argument grounded in specific facts or law to support his claim.](#)
- [4th - Railroad conductor's Title VII race discrimination claim was subject to mandatory arbitration under the Railway Labor Act.](#)

***** Arbitration – Individual contracts *****

AL - An employee's tort claims were still subject to arbitration, regardless of when her employment with the employer ended.

Women's Care Specialists v. Potter (Alabama 05/19/2023)
<http://case.lawmemo.com/al/womens.pdf>

The employer and three of its employees challenged the trial court's decision to deny their motions to compel arbitration against Potter. The Alabama Supreme Court reversed and remanded the trial court's order. The consolidated appeals arose out of an employment dispute between Potter and her former employer and out of a dispute between Potter and three of her former colleagues. Potter argued that only her breach of contract claim against the employer was subject to arbitration and that her tort claims against the employer and her three colleagues were not subject to arbitration because they arose after her employment with the employer ended. The court found the breach of contract claim, which relates to her employment with the employer was subject to the arbitration provision in the parties' amended employment agreement. As for the tort claims, the court concluded that Potter's tort claims were also related to Potter's employment with the employer. The court found Potter and the employer expressly agreed in the employment agreement that any obligations they owed to one another-including the obligation to arbitrate any disputes related to Potter's employment-would not terminate upon the expiration or termination of the agreement. Thus, Potter's tort claims against the employer and her three former colleagues were still subject to arbitration regardless of when her employment ended.

TX - The Texas Arbitration Act requires a stay of litigation proceeding pending arbitration.

Hoffman v. Baker Hughes Co (Texas Ct App 06/01/2023)
<http://case.lawmemo.com/tx/hoffman.pdf>

A dispute occurred between Hoffman and his employer regarding a breathalyzer test that resulted in the employer deciding to terminate Hoffman. The employer sought to compel arbitration under a mandatory arbitration agreement. The trial court compelled arbitration. The Texas Court of Appeals affirmed the trial court's order compelling arbitration but reversed the trial court's order dismissing the case with prejudice for further proceedings. The issue of whether Hoffman's claim was subject to arbitration was a matter to be determined by the arbitrator. However, the Texas Arbitration Act provides that an order compelling arbitration must include a stay of the underlying litigation. After arbitration, the trial court may be needed to affirm or modify an order.

TX - Employee fails to show arbitration agreement was unconscionable due to the costs associated with the arbitration.

Houston AN USA v. Shattenkirk (Texas 05/26/2023)
<http://case.lawmemo.com/tx/HoustonANUSA.pdf>

Shattenkirk sued the employer, alleging his termination was due to discrimination and in retaliation for his reporting of racist comments. The Supreme Court of Texas reversed the Court of Appeal's judgment holding the parties' arbitration agreement was

unconscionable. As part of the onboarding process Shattenkirk electronically signed and accepted an arbitration agreement requiring arbitration of all claims and disputes connected with his employment, including termination and discrimination claims. Shattenkirk alleged he heard one of his superiors make racist comments and reported the incident to a senior director. Shattenkirk was then placed on a PIP and eventually terminated. The lower courts found the arbitration agreement was unconscionable and unenforceable because the costs associated with the arbitration were so excessive they would foreclose Shattenkirk from pursuing his claims. The court found that Shattenkirk failed to present evidence that increased cost associated with arbitration, compared to litigation, foreclosed him from pursuing his claims. Shattenkirk argued that because the arbitration agreement failed to allocate arbitration fees to the employer, the agreement on its face rendered the arbitral forum inaccessible. However, the court found Shattenkirk misunderstood the burden of proof and read language into the agreement that was simply not there. Further, Shattenkirk argued he would be responsible for splitting the costs of arbitration. The court found the agreement was silent on the arbitration costs. The court further noted, "the Supreme Court's holding that an arbitration agreement's mere silence [concerning] costs and fees, by itself, is a plainly insufficient basis for invaliding" an arbitration agreement."

CA - A carve out provision in the parties' agreement provides claims under PAGA are not arbitrable.

Duran v. EmployBridge (California Ct App 05/30/2023)
<http://case.lawmemo.com/ca/duran4.pdf>

Duran sued the employer to recover civil penalties under PAGA for labor code violations suffered. The California Court of Appeal affirmed the trial court's denial of the employer's motion to compel arbitration. The trial court denied the employer's motion because it found the issues presented by Duran were not subject to arbitration. The contract provided, "claims for unemployment compensation, claims under the National Labor Relations Act, claims under PAGA, claims for workers compensation benefits and any claim that is non-arbitrable under applicable state or federal law are not arbitrable under this agreement." Thus, the court concluded the contract language was unambiguous and provided that claims under PAGA were not arbitrable.

NY - A tenured professor's termination was disproportionate to his unblemished record of 19 years.

O'Brien v. Yonkers City Sch Dist (New York App Div 06/07/2023)
<http://case.lawmemo.com/ny/obrien1.htm>

O'Brien appealed his termination. The New York Appellate Division modified the hearing officer's order by deleting the provision denying O'Brien's petition to vacate the penalty of termination. O'Brien was a tenured teacher working for the employer. O'Brien was

charged with conduct unbecoming of a teacher, misconduct, and insubordination for allegedly restraining a female student who was trying to get past him. The parties proceeded to arbitration, and after a hearing, O'Brien was terminated. On appeal, O'Brien sought to vacate the penalty of termination of his employment. The court found that there was a rational basis and evidentiary support that O'Brien committed the conduct of inappropriately restraining a female student who was trying to get past him. However, the court found O'Brien otherwise had an unblemished record of approximately 19 years as a teacher with the employer. Therefore, the court found the penalty of termination of employment was so disproportionate to the offense as to be shocking to one's sense of fairness.

***** Arbitration – Collective bargaining agreements *****

NY - Exempt employee is terminable at-will.

Teamsters Local 445 v. Monroe (New York 05/23/2023)

<http://case.lawmemo.com/ny/teamsters.pdf>

The employer challenged the trial court's decision to grant the union's motion to compel arbitration. The New York Court of Appeals reversed and denied the union's motion to compel arbitration. The union filed a grievance with the employer after it terminated an employee without just cause. The parties entered into a CBA that provided for-cause termination protections to certain exempt-class employees. The trial court denied the employer's motion to dismiss, concluding that neither law nor public policy prohibited the parties from bargaining tenure protections for an exempt employee or precluded the employee from grieving or arbitrating the termination. The court found that affording for-cause termination protections to an exempt class employee would violate a statute, decisional law, or public policy. First, the court explained, that its decision was consistent with the legislature's omission of exempting employees from the tenure protections outlined in Civil Service Law §75 and §76. Second, the Civil Service Law evinced the legislature's intent to closely guard exempt class protections. The legislature's strict regulation of the exempt class suggested an intent to ensure that no position is misclassified as exempt. The court found the CBA contravened that intent by altering an essential attribute of one exempt class position: at-will terminability. Third, the court found public policy weighed against enforcement of the CBA's termination protections. The court noted, "considering the nature of positions classified as exempt, appointing officers must be free to choose their employees as they please." The employer was, therefore, free to terminate the employee without cause, and the union's challenge to the employee's termination was not arbitrable.

4th - Arbitrator failed to determine whether the employer had a reasonable basis for discharging employee.

Advantage Veterans Services v. Steel Workers (4th Cir 06/15/2023)
<http://case.lawmemo.com/4/advantage.pdf>

The employer challenged an arbitration award in favor of the union stemming from the discharge of a union-represented employee under the Labor Management Relations Act. The trial court determined that the arbitrator correctly applied the just cause analysis. The Fourth Circuit reversed. The arbitrator failed to explicitly make the required determination that the employer had a reasonable basis to discharge the employee, as was required under the explicit terms of the parties' collective bargaining agreement. This determination was a clear and unambiguous procedural requirement, and the arbitrator's oversight required vacating the arbitration award.

10th - The Collective Bargaining Agreement precluded hospital's decision regarding staffing levels from being arbitrated.

Nurses Organizing Committee v. Midwest Div MMC (10th Cir 06/13/2023)
<http://case.lawmemo.com/10/nurses.pdf>

The nurses union filed a grievance over the hospital's new staffing grids and sought arbitration under the grievance procedure in the parties' collective bargaining agreement ("CBA"). The employer refused to process the grievance on the basis that it challenged the hospital's implementation of a staffing plan, which was not arbitrable under the CBA. The union sued the employer seeking to compel arbitration under Section 301 of the Labor Management Relations Act ("Act"). The trial court granted summary judgment in favor of the employer. The Tenth Circuit affirmed. The union's grievance could not be arbitrated because the explicit text of the CBA stated that the hospital's decisions regarding staffing levels and/or ratios were management rights and would not be subject to the grievance and arbitration process.

NH - An arbitrator commits a plain mistake in awarding backpay to an employee.

Portsmouth v. Portsmouth Ranking Officers Assoc (New Hampshire 06/07/2023)
<http://case.lawmemo.com/nh/Portsmouth.pdf>

The employer appealed the trial court's judgment denying its request to modify, correct, or vacate an arbitrator's award of backpay to Goodwin. The Supreme Court of New Hampshire reversed in part and vacated the trial court's confirmation of the arbitrator's award and remanded. Goodwin was terminated by the employer after it found Goodwin fostered an inappropriate relationship with a 92-year-old woman and unduly influenced her to leave the majority of her estate to him. The employer argued the arbitrator committed plain mistake because she failed to correctly apply the after-acquired-evidence doctrine in determining the amount of backpay award. After acquired evidence is evidence of an employee's misconduct discovered by the employer after it has terminated the employee for an unlawful reason, which is so severe that the employer

would have terminated the employee on those grounds alone had it known of the misconduct at the time of the discharge. Employers may introduce such evidence in the defense of HYPO: wrongful or unlawful termination claims to bar or limit the employee's recovery. The court found the arbitrator committed a plain mistake. As a matter of law, the probate decision of August 2015 was not a basis for Goodwin's termination, which occurred on June 24, 2015. Because the after-acquired evidence was not used to justify Goodwin's termination, but only to mitigate his remedy, the arbitrator misapplied the law to the facts when she treated the probate decision as a second ground for Goodwin's termination and determined that he was entitled to Loudermill protection on that basis. Therefore, the arbitrator relied in part on an erroneous legal conclusion that prevented her free and fair exercise of judgment regarding the backpay award.

RI - Employee fails to present any argument grounded in specific facts or law to support his claim.

Jenkins v. East Providence (Rhode Island 06/06/2023)

<http://case.lawmemo.com/ri/jenkins.pdf>

Jenkins appealed pro se the trial court's decision to deny his petition of writ of mandamus and dismissal of his complaint. The Supreme Court of Rhode Island affirmed the trial court's decision. The employer terminated Jenkin's employment, and the parties signed a memorandum of agreement. The agreement contained various provisions, including a provision explaining the enforcement of the agreement was subject to the grievance and arbitration provisions of the CBA. The trial court found that because the agreement was subject to the grievance and arbitration procedures, the court lacked the authority to proceed. Also, the trial court found that Jenkins failed to establish the required elements to entitle him to a writ of mandamus. The court found that although Jenkins submitted a memorandum of law to the court, he failed to provide any meaningful discussion of the issues on appeal as required by Article I, Rule 12A of the Supreme Court Rules of Appellate Procedure. The court noted, "simply stating an issue for appellate review, without a meaningful discussion thereof or legal briefing of the issues, does not assist the court in focusing on the legal questions raised, and therefore constitutes a waiver of that issue." Jenkins failed to present any argument grounded in specific facts or law to support his claim the trial court erred in denying his petition for writ of mandamus and dismissing his complaint. Further, the record revealed that Jenkin's arguments were not raised in the trial court, and therefore waived.

4th - Railroad conductor's Title VII race discrimination claim was subject to mandatory arbitration under the Railway Labor Act.

Polk v. Amtrak (4th Cir 04/26/2023)

<http://case.lawmemo.com/4/polk.pdf>

Polk, a railroad conductor, sued Amtrack for racial discrimination in violation of Title VII. The trial court granted Amtrack's motion to dismiss on the grounds that the Railway Labor Act ("RLA") precluded Polk's Title VII claim because that claim would require the court to interpret the rights within the collective bargaining agreement ("CBA") between Polk's union and Amtrack, and therefore should be referred to mandatory arbitration. The Fourth Circuit affirmed. A federal Title VII claim can present itself as a minor dispute and could be subject to the RLA's arbitral requirement for mandatory arbitration of such disputes. Polk's Title VII claim was a minor dispute because it required an interpretation of the CBA as it focused on whether Amtrack violated the CBA or properly applied it. Additionally, requiring arbitration of Polk's Title VII claim did not render her rights ineffective.

Find us on [LinkedIn](#) for more content.

Editor: James Baez, James@LawMemo.com. Copyright by LawMemo, Inc., PO Box 9182, Portland, OR 97207, (503) 227-1500. We are sending *Arbitration Law Memo* monthly. To unsubscribe, reply to this email with the word "REMOVE" in the subject line.