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CASE COMMENTS

A. ARBITRATION

*Richmond, Fredericksburg & Potomac Railroad Co. v.
Transportation Communication International Union*

973 F.2d 276 (4th Cir. 1992)

The arbitral process serves as an important method of dispute resolution in the area of labor relations.¹ The strong federal policy favoring arbitration over litigation offers both labor and management a resolution to their dispute with less delay and expense.² However, the only way to accomplish these advantages of arbitration is to accord some sense of finality to the judgments of arbitrators.³ To achieve this finality, courts must use a very limited scope of review in assessing an arbitrator's decision.⁴

In *Richmond, Fredericksburg & Potomac Railroad v. Transportation Communications International Union*,⁵ the United States Court of Appeals for the Fourth Circuit stressed the deference owed to an arbitrator's award and the limited role of judicial review in labor arbitration cases. The Fourth Circuit held that the parties had empowered the arbitrator to determine the legal relationship between the plaintiff railroad and defendant union. The only justification for the Fourth Circuit to question the arbitrator's interpretation of the law is if the decision was in manifest disregard of the law. The Fourth Circuit found that the arbitrator's legal analysis was in good faith, not in manifest disregard of the law, and upheld the decision. The Fourth Circuit reversed the district court's setting aside of the award and remanded the case with instructions to reinstate the arbitrator's award.

In April of 1990, the Richmond, Fredericksburg & Potomac Railroad (RF&P) made a unilateral severance offer to those clerical employees at its Potomac Yard facility who would voluntarily retire. However, the Trans-

1. See *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 37 (1987) (stating that federal statutes reflect preference for private settlement of disputes without government intervention) (citing Labor Management Relations Act of 1947, 29 U.S.C. § 173(d) (1947)); *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (1960) (noting that arbitration is substitute for industrial strife).

2. See *Warrior & Gulf Navigation*, 363 U.S. at 578 (stating that arbitration acts as substitute for industrial strife thus proving advantageous over litigation).

3. See *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596 (1960) (stating that federal policy favoring arbitration would be undermined if courts had final word).

4. See *infra* note 542 (citing cases defining courts' limited scope of review over decisions of arbitration panels).

5. 973 F.2d 276 (4th Cir. 1992).

portation Communications International Union (TCU), which represented the clerks, argued that the RF&P could not legally negotiate with the individual clerks, but rather that the railroad must deal directly with the TCU. The RF&P refused to bargain with the TCU but finally agreed to submit the dispute to an expedited arbitration of the matter.

The submission of the parties posed the following question to the arbitrator: Whether the RF&P can unilaterally separate employees without an agreement with the TCU. After reviewing the briefs and conducting a hearing, the arbitrator found that the RF&P had failed to establish a contractual authority to deal directly with the employees. Additionally, the course of dealing between the parties did not show any such established practice. In finding for the TCU, the arbitrator also based the decision on federal cases citing the Railway Labor Act (RLA),⁶ which requires railroads to bargain with unions over questions of lump-sum buy-outs.

The RF&P brought suit in the United States District Court for the Eastern District of Virginia in order to set aside the decision of the arbitrator. On the plaintiff's motion for summary judgment, the district court held that the arbitrator had exceeded the scope of the parties' submission by basing the decision on the RLA. The district court also suggested that the legal analysis of the arbitrator was faulty.

The RF&P contended, and the district court found, that the arbitrator exceeded his authority by considering federal case law in the analysis of the dispute. The RF&P argued that the parties' submission confined the arbitrator to interpreting the collective bargaining agreement between the two parties. The Fourth Circuit explained that although the Supreme Court has not prohibited an arbitrator's recourse to legal authority, the parties' submission defines the limits of the arbitrator's authority. Additionally, no statute requires the arbitrator to remain willfully ignorant of the governing statutes and case law. If the parties fail to limit the powers of the arbitrator in the submission, it is presumed that the arbitrator is the final judge of any questions that arise from the submitted issue.

In looking at the parties' submission, the Fourth Circuit determined that the RF&P and the TCU had submitted a broad issue to the arbitrator with no limits on his authority. Although the RF&P argued that the parties understood the submission to limit the arbitrator's analysis to the collective bargaining agreement, the court found this argument undermined by the brief which the plaintiff submitted to the arbitration panel. In its brief, the RF&P cited federal cases to establish that the individual contracts were legal; therefore, it explicitly put before the arbitrator the issue of the legality of the contracts. The court further refused to find any implied restrictions on the arbitrator's authority in the submission. If these restrictions were implicit, it would countervene the purpose of arbitration, avoiding the delay and expense of litigation. The Fourth Circuit explained that to advance the policy favoring arbitration, courts should give deference to the arbitrator's

6. 45 U.S.C. § 153(i), (q) (1988).

interpretation of the scope of the issue as long as it can be rationally derived from the parties' submission. In this case, the court found that the submission rationally included the determination of the railroad's contractual power as well as its legal authority to negotiate individually with the clerks.

The district court also had held that the arbitrator's legal analysis was flawed irretrievably. However, the Fourth Circuit noted that in reviewing arbitration awards, a court's role is to enforce the bargained-for decision of the arbitrator and not to evaluate the factual or legal findings. As long as the arbitrator has made a good faith effort to apply the law as the arbitrator perceives it, the reviewing court cannot overturn the decision because of a misinterpretation of the law, faulty legal reasoning, or an erroneous legal conclusion. The only exception to this standard is when the arbitrator has acted in manifest disregard of the law. In order for this standard of review to apply, the arbitrator must have understood and stated the law correctly but then have proceeded to disregard the same in order to impose the arbitrator's own notions of right and wrong.

Although the district court had found that the cases cited by the arbitrator were distinguishable from the present case, the Fourth Circuit explained that this finding did not rebut the presumptive deference given to the arbitrator's legal analysis. The district court also had found that by relying on the cases cited in the arbitrator's decision, the arbitrator had manifestly disregarded the recent Supreme Court case *Pittsburgh & Lake Erie Railroad v. Railway Labor Executives' Ass'n.*⁷ However, the Fourth Circuit found that the Supreme Court decision was only marginally relevant to the issue of the legality of the railroad's unilateral severance offer. Additionally, the courts appear to be split regarding the proper application of the *Pittsburgh & Lake Erie* decision.⁸ The Fourth Circuit explained that in reviewing an arbitrator's decision, it is not the duty of the court to resolve such legal conflicts, but rather to ascertain a basis for the arbitrator's legal belief. The Fourth Circuit determined in this case that the arbitrator had not disregarded the law, but rather had relied correctly on what he believed the law to be. Thus, the Fourth Circuit reversed the district court and remanded the case with instructions to reinstate the arbitrator's award.

Although the circuits are split as to the application of *Pittsburgh & Lake Erie*, the issue in *Richmond* was the deferential nature of the judicial review of an arbitration award. On that point, the courts are fairly uniform in their approach: courts are to afford the utmost deference to the decision of the arbitrators.⁹ However, courts will not uphold an award in which the

7. 491 U.S. 490 (1989).

8. See *Brotherhood of Ry. Carmen v. Atchison, T. & S.F. Ry.*, 894 F.2d 1463, 1466 (5th Cir. 1990) (finding that unilateral severance offer may be inconsistent with previous holdings); *International Ass'n of Machinists v. Soo Line R.R. Co.*, 850 F.2d 368, 375 (8th Cir. 1988) (holding that unilateral separation offer is consistent with RLA).

9. See, e.g., *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987) (stating that courts have limited power to review arbitration award); *Stroehmann Bakeries, Inc. v. Local 776, Int'l Bhd. of Teamsters*, 969 F.2d 1436, 1441 (3rd Cir. 1992) (same); *El Dorado*

arbitration panel exceeded its authority¹⁰ or manifestly disregarded the law.¹¹ The Fourth Circuit found that neither of these exceptions applied in *Richmond* and correctly upheld the arbitrator's decision.

Summer Rain v. Donning Co./Publishers, Inc.

964 F.2d 1455 (4th Cir. 1992)

Section 3 of the Arbitration Act¹² requires a court to stay a proceeding until arbitration of "any issue referable to arbitration under an agreement in writing." In determining when an issue is referable to arbitration, some courts have relied on the intertwining doctrine. Under the intertwining doctrine, a court may deny arbitration "when the arbitrable and non-arbitrable claims arise out of the same transaction and are sufficiently intertwined factually and legally. . . ."¹³ The court may then hear all claims together in one trial. In *Dean Witter Reynolds, Inc. v. Byrd*¹⁴ the United States Supreme Court rejected the intertwining doctrine in part by

Technical Servs., Inc. v. Union Gen. De Trabajadores de Puerto Rico, 961 F.2d 317, 319-20 (1st Cir. 1992) (noting that award must stand if arbitrator acted within authority); Chrysler Motors Corp. v. International Union, Allied Indus. Workers of Am., 959 F.2d 685, 687 (7th Cir. 1992) (noting extremely limited judicial review of award); Robinson v. Transworld Airlines, Inc., 947 F.2d 40, 42 (2d Cir. 1991) (same); Interstate Brands Corp., Butternut Bread Div. v. Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135, 909 F.2d 885, 888 (6th Cir. 1990) (same); Brotherhood of Maintenance of Way Employees v. Interstate Commerce Comm'n, 920 F.2d 40, 45 n.6 (D.C. Cir. 1990) (noting extremely deferential nature of judicial review); NCR Corp., E & M-Wichita v. International Ass'n of Machinists and Aerospace Workers, Dist. Lodge No. 70, 906 F.2d 1499, 1503 (10th Cir. 1990) (same); Booth v. Hume Publishing Inc., 902 F.2d 925, 932 (11th Cir. 1990) (stating judicial review of arbitration is narrowly limited); Delta Queen Steamboat Co. v. District 2 Marine Eng'rs Beneficial Ass'n, 889 F.2d 599, 602 (5th Cir. 1989) (noting that review is extremely limited).

10. See *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) (stating that arbitrator does not sit to dispense his own brand of justice); *Air Line Pilots Ass'n Int'l v. Aviation Assocs. Inc.*, 955 F.2d 90, 93 (1st Cir. 1992) (noting that even if award is reasonable it cannot be upheld if arbitrator exceeded authority); *Delta Queen Steamboat Co. v. District 2 Marine Eng'rs Beneficial Assoc.*, 889 F.2d 599, 602 (5th Cir. 1989) (stating that judicial deference ends when arbitrator exceeds limitations of contractual mandate of parties).

11. See, e.g., *Upshur Coals Corp. v. United Mine Workers of Am.* Dist. 31, 933 F.2d 225, 229 (4th Cir. 1991) (stating that legal interpretation only overturned where it is in manifest disregard of law); *News Am. Publications, Inc. Daily Racing Form Div. v. Newark Typographical Union, Local 103*, 918 F.2d 21, 24 (3rd Cir. 1990) (stating that only if award is in manifest disregard of agreement, unsupported by principles of contract construction and law of shop, then award cannot stand) (quoting *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123, 1126 (3rd Cir. 1969)); *NCR Corp., E & M-Wichita v. International Ass'n of Machinists and Aerospace Workers, Dist. Lodge No. 70*, 906 F.2d 1499, 1504 (10th Cir. 1990) (same); *Chicago Newspaper Publishers' Ass'n v. Chicago Web Printing Pressmen's Union No. 7*, 821 F.2d 390, 394 (7th Cir. 1987) (same); *American Postal Workers Union, v. U.S. Postal Serv.*, 789 F.2d 1, 7 n.20 (D.C. Cir. 1986) (stating that award cannot be vacated based on mere errors of law).

12. 9 U.S.C. § 3 (1988).

13. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 216-17 (1985).

14. 470 U.S. 213 (1985).

holding that, even when the result is separate proceedings, a federal district court must compel arbitration of pendent state claims when one party files a motion to compel arbitration.

In *Summer Rain v. Donning Co./Publishers, Inc.*¹⁵ the United States Court of Appeals for the Fourth Circuit addressed the issue of whether the Arbitration Act provides for severance of arbitrable and nonarbitrable "issues" without regard to the way those issues are grouped into "claims." Specifically, the court addressed the application of the intertwining doctrine in a case not involving pendent claims.

In *Summer Rain* the plaintiffs, a group of authors, alleged primarily that the defendant, Donning Company, their publisher, had improperly transferred the publishing rights to their books. The authors all had contracts with Donning. These contracts gave Donning exclusive rights to publish their books and contained anti-assignment clauses. Donning sold the rights to the authors' books and inventories of the authors' books to the defendant Schiffer Publishing Limited. The authors alleged that this transfer constituted fraud and breach of contract.

Each of the authors' contracts provided for arbitration of all disputes not involving failure to pay royalties. The authors claimed that the fraud and breach of contract resulted in a loss of royalties, and that these nonarbitrable issues involving royalties were so intertwined with the arbitrable issues of fraud and breach of contract that the district court should decide all issues. Relying on the intertwining doctrine, the district court concluded that the issues involving royalties were not severable from the other arbitrable issues. The court denied arbitration of all issues and set the case for trial.

On interlocutory appeal the Fourth Circuit rejected the district court's reliance on the intertwining doctrine. The Fourth Circuit relied on the Supreme Court's decision in *Byrd*.¹⁶ In *Byrd* a party to a contract dispute sought severance of the arbitrable state claims from the nonarbitrable federal claims. The lower courts had applied the intertwining doctrine and denied arbitration of all claims. The Supreme Court, after examining the legislative history of the Arbitration Act, determined that the purpose of the Act was to promote arbitration wherever the parties to a suit had a signed agreement to arbitrate some or all issues. The Court therefore concluded that the intertwining doctrine could not preclude arbitration of arbitrable pendent state claims even if the result was inefficient bifurcated proceedings.

The holding in *Byrd* addressed only the narrow issue of severance of arbitrable pendent claims. The Supreme Court did not explicitly reject the intertwining doctrine in all situations. Moreover, the Court spoke in terms of "claims," rather than "issues." Thus, *Byrd* did not clearly resolve

15. 964 F.2d 1455 (4th Cir. 1992).

16. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213 (1985).

whether courts could sever nonarbitrable issues from arbitrable issues when those issues are grouped into a single claim.

In *Summer Rain*, the Fourth Circuit addressed this question. The court noted that the Arbitration Act speaks in terms of issues. The court then noted that the Supreme Court had relied on the Arbitration Act in determining that pendent claims were severable. The court concluded that, because the Supreme Court had relied on the Act, the Supreme Court must have equated issues with claims. Extrapolating from the Supreme Court's narrow holding in *Byrd*, the Fourth Circuit inferred that the Court must have intended to require severance of all arbitrable issues.

The Fourth Circuit also undertook its own analysis of the Arbitration Act. The court reasoned that because the Act speaks only of issues, courts should determine arbitrability on an issue by issue basis without regard to the ways the issues are grouped into claims. The court then cited the Supreme Court's decision in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*,¹⁷ in which the Supreme Court emphasized that courts should resolve ambiguities as to the scope of an arbitration clause in favor of arbitration. The Fourth Circuit interpreted this case to require courts to apply the Arbitration Act broadly, providing a strong presumption in favor of arbitration of any arbitrable issues. Employing both its interpretation of *Byrd* and its analysis of the Arbitration Act, the Fourth Circuit determined that the Arbitration Act precludes use of the intertwining doctrine to deny arbitration of arbitrable issues even when those issues are grouped together with other nonarbitrable issues in a single claim.

Applying this reasoning to the case *sub judice*, the Fourth Circuit found that the key issues in the case, the issues of fraud and breach of contract, were subject to arbitration under the authors' contracts.¹⁸ The court held that these issues should be submitted to arbitration. The court recognized that some issues involving royalties were not subject to arbitration and withheld these issues from arbitration. Because the determination of the royalty issues likely would turn on the resolution of the other arbitrable issues, the court stayed litigation until arbitration of the fraud and breach of contract issues. Finally, the Fourth Circuit assigned to the district court the power to frame the precise issues for the arbitrators to resolve.

In *Summer Rain* the Fourth Circuit aligned itself with prior decisions of the Sixth, Seventh, and Eighth Circuits rejecting the intertwining doctrine.¹⁹ These circuits had held that the Arbitration Act requires courts

17. 489 U.S. 468 (1989).

18. *Summer Rain v. Donning Co./Publishers, Inc.*, 964 F.2d 1455, 1461 (4th Cir. 1992). The court withheld one count in the plaintiffs' complaint from arbitration, involving a deduction of royalties, and set that count for trial. *Id.*

19. See *Byrd*, 470 U.S. at 217 (noting circuits rejecting intertwining doctrine). The Fifth, Ninth, and Eleventh Circuits had relied on the intertwining doctrine prior to *Byrd*. *Id.* at 216.

to compel arbitration of arbitrable claims whenever one party so requests.²⁰ The Fourth Circuit held that the Act requires arbitration not only of separate arbitrable claims, but also of all arbitrable issues without regard to how they are grouped into claims.

The Fourth Circuit relied on the Supreme Court's decision in *Byrd* in reaching this conclusion. In *Byrd* the Supreme Court held that the Arbitration Act requires severance of arbitrable pendent claims. The Fourth Circuit interpreted that decision to equate claims with issues. From that inference the Fourth Circuit concluded that the Supreme Court meant to preclude use of the intertwining doctrine to deny arbitration of any arbitrable issue.

The Fourth Circuit may have interpreted the Supreme Court's decision in *Byrd* too expansively. Because the holding in *Byrd* involved only the relatively narrow question of pendent claims, the Supreme Court discussed the more general questions about the intertwining doctrine in very loose terms. Initially the *Byrd* Court referred to section 4 of the Arbitration Act, which speaks in terms of "issues."²¹ However, in its discussion of the various circuits' holdings regarding the intertwining doctrine, the Court spoke in terms of "claims."²² Finally, in its holding, the Court stated that it agreed with the Sixth, Seventh, and Eighth Circuits that the Act requires severance of pendent claims.²³ The Court never clearly stated whether it intended "claims" or "pendent claims" to correlate with "issues" in the statute. Nor did the Court state whether it intended to reject the intertwining doctrine in situations not involving pendent claims.

The Fourth Circuit has some authority and support for rejecting the intertwining doctrine outright and interpreting the Arbitration Act to require severance of all arbitrable issues. The Act speaks in terms of issues, and the Supreme Court's holding in *Volt*²⁴ indicates that courts should resolve ambiguities in favor of arbitration. In addition, the holding in *Byrd* does demonstrate a willingness to sever arbitrable matters. However, *Byrd* neither declared the intertwining doctrine dead, nor required severance of all arbitrable matters in all cases. Therefore, the Fourth Circuit may have read *Byrd* too broadly.

20. See *id.* at 217 (noting circuits rejecting intertwining doctrine).

21. *Id.* at 215.

22. *Id.* at 216-17.

23. *Id.* at 217. Significantly, all the circuit court cases the Supreme Court cited involved questions of severance of pendent state claims. See *Surman v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 733 F.2d 59 (8th Cir. 1984) (rejecting intertwining doctrine in regard to pendent claims); *Liskey v. Oppenheimer & Co.*, 717 F.2d 314 (6th Cir. 1983) (same); *Belke v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 693 F.2d 1023 (11th Cir. 1982) (upholding intertwining doctrine in regard to pendent claims); *Dickinson v. Heinold Securities, Inc.*, 661 F.2d 638 (7th Cir. 1981) (rejecting intertwining doctrine in regard to pendent claims); *Miley v. Oppenheimer & Co.*, 637 F.2d 318 (5th Cir. 1981) (upholding intertwining doctrine in regard to pendent claims).

24. *Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468 (1989).