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# Washoe Cty. Sch. Dist. v. White, 133 Nev. Adv. Op. 43 (June 29, 2017)

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## CONTRACT LAW: ARBITRATION AWARDS

### **Summary**

Kara White (“White”) was terminated from her role as elementary school principal after the school district’s decision to terminate her was affirmed in an arbitration hearing. White filed a motion to vacate the award in district court. The district court granted White’s motion, holding that (1) the arbitrator exceeded his authority, (2) the arbitrator manifestly disregarded NRS 391.3116, and (3) the award was arbitrary and capricious. The school district appealed to the Supreme Court of Nevada, which reversed the district court’s ruling.

### **Background**

From 2008 to 2013, Kara White (“White”) was employed as a principal for a Washoe County elementary school. White was a member of respondent Washoe School Principals’ Association (“WSPA”), and WSPA and the appellant Washoe County School District (“District”) were parties to a collective bargaining agreement (“CBA”) governing the District’s employment terms.

During White’s first year in her role as principal, she was trained on school funds use, including use of student activity funds (“SAFs”). In 2009, White’s school was audited. The audit report revealed that the school had improperly used SAFs, and that White had signed off on checks she had issued to herself. The District discussed the report with White and told her to reference the SAFs manual (Manual). In writing, White responded that she would no longer permit or engage in the improper use of SAFs.

In 2013, upon a staff member’s report of White’s improper use of school funds, the District began an investigation, which included a SAFs audit from 2011 to 2013. The audit revealed that over \$9,000 of the school’s SAFs expenditures were inappropriate. White was notified that her actions violated NRS 391.312 for:

- (c) Unprofessional conduct; . . . (i) Inadequate performance; . . . (k) Failure to comply with such reasonable requirements as a board may prescribe;
- (1) Failure to show normal improvement and evidence of professional training and growth; . . . (p) Dishonesty.

The District found that White’s responses to the audit were “less than credible” since she claimed to be unaware of the Manual. As such, the District concluded that White’s responses were “dishonest,” and resulted in violation of NRS 391.312 for “[d]ishonesty.” The District’s deputy superintendent upheld the termination recommendation, and White appealed the termination decision to arbitration.

The arbitration hearing was held in 2014, and was administered by arbitrator Alexander Cohn. Arbitrator Cohn affirmed White’s termination because “she was discharged for just cause”

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<sup>1</sup> By Margarita Elias.

for her dishonesty in the matter. White filed a motion to vacate the award in district court, which the district court granted. It held that (1) Arbitrator Cohn exceeded his authority, (2) Arbitrator Cohn manifestly disregarded NRS 391.3116, and (3) the Award was arbitrary and capricious. The District filed the instant appeal.

## **Discussion**

### *Arbitrator Cohn did not exceed his authority*

“The Nevada Arbitration Act provides specific grounds for invalidating an arbitration award. NRS 38.241(1)(d) dictates that a court shall vacate an arbitration award if the arbitrator exceeded his powers.”<sup>2</sup> In particular, “[A]rbitrators exceed their powers when they address issues or make awards outside the scope of the governing contract.”<sup>3</sup> Moreover, an arbitrator “is not free to contradict the express language of the contract.”<sup>4</sup> However, “[a]rbitrators do not exceed their powers if their interpretation of an agreement, even if erroneous, is rationally grounded in the agreement.”<sup>5</sup> Accordingly, “[a]n award should be enforced so long as the arbitrator is arguably construing or applying the contract” and “there is a colorable justification for the outcome.”<sup>6</sup>

Here, there is justification for White’s termination, and it does not contradict the CBA’s express language. Specifically, Article 1.18 states:

Disciplinary actions. . . taken against post-probationary unit members. . . *shall be progressive in nature and related to the nature of the infraction.* Unit members shall be given *reasonable* opportunity for improvement.

The School District shall not discharge . . . a post probationary bargaining unit member of this unit *without just cause.*<sup>7</sup>

White argued that that the arbitrator’s award contradicted the plain language of Article 18.1 because her termination was not “progressive in nature.” The Court reasoned that Article 18.1 also requires that the phrase “related to the nature of the infraction” qualify the phrase “progressive in nature,” and the two combine to modify “[d]isciplinary actions.” Accordingly, the Court determined that Article 18.1 served to preclude the District from choosing disciplinary actions that were disproportionate to the misconduct, while allowing the District to impose more severe penalties for repeated infractions. Indeed, under White’s interpretation, an employee’s first offense

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<sup>2</sup> Health Plan of Nev., Inc. v. Rainbow Med., L.L.C., 120 Nev. 689, 697, 100 P.3d 172, 178 (2004) (internal citation omitted).

<sup>3</sup> *Id.*

<sup>4</sup> Int’l Ass’n of Firefighters, Local 1285 v. City of Las Vegas, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991).

<sup>5</sup> *Id.* at 698, 100 P.3d at 178.

<sup>6</sup> *Id.*

<sup>7</sup> (Emphasis added).

of misconduct could not result in termination, no matter how severe, and would render the term “related to the nature of the infraction” meaningless.<sup>8</sup>

*Two common-law grounds in Nevada for reviewing private binding arbitration awards*

In Nevada, there are two common-law grounds recognized “under which a court may review private binding arbitration awards: (1) whether the award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator manifestly disregarded the law.”<sup>9</sup> Notably, “the former standard ensures that the arbitrator does not disregard the facts or the terms of the arbitration agreement,” while “the latter standard ensures that the arbitrator recognizes applicable law.”<sup>10</sup>

*Arbitrator Cohn did not manifestly disregard the law*

The award provides that (1) “any inclination to reverse [White’s] discharge and substitute progressive discipline[,] such as . . . an opportunity to improve . . . , is washed away by the dishonesty finding”; and (2) “the District has carried its burden to show [that White] violated NRS 391.312(1)(c); (i); (k); (l); (p).” Based on this language, White argued that Arbitrator Cohn manifestly disregarded NRS 391.3116<sup>11</sup> by ignoring the CBA’s Article 18.1 and relying on NRS 391.3124<sup>12</sup> in finding just cause to discharge her. The Court disagreed.

“[J]udicial inquiry under the manifest-disregard-of-the-law standard is extremely limited.”<sup>13</sup> Thus, “the issue is not whether the arbitrator correctly interpreted the law, but whether the arbitrator, knowing the law and recognizing that the law required a particular result, simply disregarded the law.”<sup>14</sup>

Here, Arbitrator Cohn cited to NRS 391.3116 in a footnote, which states “NRS 391.3116 provides that a [CBA] may super[s]ede the provisions of NRS 391.311 to 391.397.” Despite the fact that the footnote misstates NRS 391.3116’s language by characterizing its mandatory exclusion of the relevant statutes as being optional, “we may not concern ourselves with the correctness of the arbitrator’s interpretation of [NRS 391.3116].”<sup>15</sup>

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<sup>8</sup> See *Musser v. Bank of Am.*, 114 Nev. 945, 949, 964 P.2d 51, 54 (1998) (providing that “[a] court should not interpret a contract so as to make meaningless its provisions” (internal quotation marks omitted)).

<sup>9</sup> *Clark Cty. Educ. Ass’n v. Clark Cty. Sch. Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 8 (2006).

<sup>10</sup> *Id.*

<sup>11</sup> NEV. REV. STAT. § 391.3116 (2013) (replaced in revision by NEV. REV. STAT. § 391.660 in 2015) provides that “the provisions of NRS 391.311 to 391.3197, inclusive, do not apply to a . . . licensed employee who has entered into a contract with the board negotiated pursuant to chapter 288 of NRS if the contract contains separate provisions relating to the board’s right to dismiss . . . the employee.”

<sup>12</sup> NEV. REV. STAT. § 391.312 (2011) (substituted in revision by NEV. REV. STAT. § 391.31297 in 2013 and then by NEV. REV. STAT. § 391.750 in 2015) provides that “an administrator may be . . . dismissed . . . for the following reasons: . . . [u]nprofessional conduct; . . . [i]nadequate performance; . . . [f]ailure to comply with such reasonable requirements as a board may prescribe; [f]ailure to show normal improvement and evidence of professional training and growth; . . . [d]ishonesty.”

<sup>13</sup> *Clark Cty. Educ. Ass’n*, 122 Nev. at 342, 131 P.3d at 8 (emphasis added) (internal quotation marks and citation omitted).

<sup>14</sup> *Id.* (internal quotation marks omitted).

<sup>15</sup> *Clark Cty. Educ. Ass’n*, 122, Nev. at 345, 131 P.3d at 10.

*The Award is neither arbitrary nor capricious*

“The arbitrary-and-capricious standard does not permit a reviewing court to vacate an arbitrator’s award based on a misinterpretation of the law.”<sup>16</sup> Rather, a court’s review of this standard is “limited to whether the arbitrator’s findings are supported by substantial evidence in the record.”<sup>17</sup>

Here, sufficient evidence existed to support Arbitrator Cohn’s “dishonesty” finding. Arbitrator Cohn examined the arbitration proceedings’ records and concluded that White’s alleged lack of understanding in regard to SAFs use and her inability to recall the Manual was so implausible that her responses during the investigatory meeting were dishonest. The Court also reasoned that sufficient evidence existed because, inter alia, SAFs training was provided during White’s first year as a principal; after the 2009 random audit White was specifically told to reference the Manual; and a copy of the Manual was available at White’s school and on the school’s website.

**Conclusion**

The Court concluded that Arbitrator Cohn did not exceed his authority in affirming White’s termination. The Court further held that Arbitrator Cohn did not manifestly disregard the law and that his decision was not arbitrary or capricious. As such, the Court reversed the district court’s order granting White’s motion to vacate the award.

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<sup>16</sup> Clark Cty. Educ. Ass’n, 122 Nev. at 343–44, 131 P.3d at 9 (emphasis added).

<sup>17</sup> *Id.* at 344, 131 P.3d at 9–10.