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Miscellaneous—Arbitration: Specific Enforcement of Employment Contract

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The dissenting opinions all take the position that a question of accident *vel non* is one of law. Accordingly, they argue, since the evidence does not support the Comptroller's conclusion, it is erroneous and the Court may overturn it. The main difficulty with this position is that it finds no support in the prior decisions of the Court. An issue raised in Judge Dye's dissent is that even though the Comptroller is not bound to accept a Workmen's Compensation determination, he is still bound to use the same definition of "accident." If this were so, then a determination by the Comptroller would necessarily have to be consistent with a finding of the Workmen's Compensation Board. The legislature, however, has expressly provided that the findings need not be consistent. The only logical explanation is that the legislature intended that different criteria would be used in each instance.

At first glance, the result seems harsh since it makes it almost impossible to receive accidental death benefits in cases where a heart attack is caused by over-exertion. However, it should be noted that this does not deny compensation altogether as it would in Workmen's Compensation cases. Here, the fact of an accident only pertains to the amount which will be paid. The beneficiary will still receive some benefits even though the death was not caused by an accident.

MISCELLANEOUS

ARBITRATION—SPECIFIC PERFORMANCE OF EMPLOYMENT CONTRACT

The petitioner entered into an eleven year employment contract with the defendant corporation. Included in the contract was an agreement that if the petitioner should be declared permanently disabled he would receive a reduced compensation for the next three years and the contract would be terminated. The contract also provided that any controversy arising should be settled by arbitration in accordance with the American Arbitration Association rules. The directors of the corporation made a determination that the petitioner was permanently disabled and that his services should be terminated. The petitioner disputed the finding of permanent disability and the resulting difference of opinion was submitted to arbitration. The arbitrators held in favor of petitioner on the issue and ordered petitioner's reinstatement.

The Supreme Court at Special Term granted the petitioner's motion to confirm the arbitrator's award and denied a cross motion to vacate it. This ruling was affirmed by the Appellate Division and was upheld by the Court of Appeals, 4-2, in *Staklinski v. Pyramid Electric Company*.[1]

The basic issue involved in this case is whether a court may, on an application to confirm an arbitration award, enter a decree of specific performance

1. Staklinski v. Pyramid Electric Co., 10 Misc. 2d 706, 172 N.Y.S.2d 224 (Sup. Ct. 1958), *aff'd* 6 A.D.2d 565, 180 N.Y.S.2d 20 (1st Dep't 1958), *aff'd* 6 N.Y.2d 159, 188 N.Y.S.2d 541 (1959).

of a contract for personal services inasmuch as a court could not do so were an action brought on the contract.

It is a well-established rule that arbitrators are not bound by rules of law in determining disputes submitted to them in the absence of an express contrary direction in the contract. Granting specific relief in arbitration does not depend upon the inadequacy of the remedy at law or anywhere else.[2] Courts have even gone so far as to say that the merits of an award, however unreasonable or unjust it may be, cannot be reinvestigated.[3] Even though the court would be unable to grant specific performance had the petitioner been a plaintiff in an action, arbitrators are not necessarily deprived of the right to grant such relief.[4] The relief which an arbitrator may award is not limited to money judgments even though an equitable decree would not be proper if the controversy were being determined by a court. It has been held that on a motion to confirm an arbitrator's award, the Supreme Court has no jurisdiction to review arbitrator's findings either of fact or of law.[5] The fact that arbitrators reach a conclusion different from that which would be arrived at by adherence to accepted rules of law does not affect the validity of the award.[6] All reasonable intendments favor the award of the arbitrator.[7]

However, this does not mean that a court could never set an arbitrator's award aside. The courts have always regarded themselves competent to inquire whether the result that arbitrators have worked out has been consistent with the public and legal policy of the community. A few examples will point the direction. An award which sanctioned a refusal by a telegraph company to deliver messages was vacated since it violated the Penal Law.[8] Arbitration was stayed where the court was of the opinion that the purpose of the contract was to break other contracts, *i.e.*, to bring about the violation of existing contractual relationships.[9] Arbitration provisions of a separation agreement were not binding on the court in relation to custody of children.[10] A court has held that where a chattel mortgage was usurious, the arbitration provisions of the contract must fall.[11] Thus it may be seen that even though arbitrators need not follow formal legal principles in their considerations and awards, in situations where a strong public policy is involved, courts may set aside awards in conflict with such policy or may refuse in their discretion to direct arbitration.[12]

2. Michelman v. Michelman, 5 Misc. 2d 570, 135 N.Y.S.2d 608 (Sup. Ct. 1954); Sweet v. Morrison, 116 N.Y. 19, 22 N.E. 276 (1889); Freyberg Bros. Inc. v. Corey, 177 Misc. 560, 31 N.Y.S.2d 10 (Sup. Ct. 1941).
3. Sweet v. Morrison, *supra* note 2.
4. Freyberg Bros. Inc. v. Corey, *supra* note 2; In re Ruppert, 3 N.Y.2d 576, 170 N.Y.S.2d 785 (1958).
5. Friedheim v. International Paper Co., 292 N.Y. 664, 56 N.E.2d 95 (1944).
6. Behrens v. Feuring, 269 App. Div. 930, 58 N.Y.S.2d 216 (1st Dep't 1944).
7. Suffolk & Nassau Amusement Co. v. Ambrose, 143 N.Y.S.2d 427 (Sup. Ct. 1955).
8. In re Western Union Tel. Co., 299 N.Y. 177, 86 N.E.2d 162 (1949).
9. In re Levinsohn Corp., 273 App. Div. 469, 78 N.Y.S.2d 171 (1st Dep't 1948).
10. In re Hill, 199 Misc. 1035, 104 N.Y.S.2d 755 (Sup. Ct. 1951).
11. In re Metro, 257 App. Div. 652, 15 N.Y.S.2d 35 (1st Dep't 1939).
12. Michelman v. Michelman, *supra* note 2.

The case at bar appears to be an exercise of this discretion. Whether the discretion was exercised properly is open to conjecture. It can be argued that since arbitration is voluntary and the parties have elected the forum in which they wish to resolve their disputes, primarily because of the reputed promptness and finality of arbitration, the expected benefit must be weighed against the possible detriment flowing from arbitration. Unless facts are shown to have existed before or at the time of the making of the award which would move a court of law or equity to deny enforcement of the award, (*e.g.* fraud, illegality, overreaching, or a device to impose otherwise prohibited penalties and forfeitures)[13] such enforcement should be granted.

On the other hand, it can be effectively argued that such an award is a violation of public policy and the court should have exercised its power in vacating the award. Such an award contravenes deeply ingrained principles and rules of equity jurisprudence regarding the specific performance of contracts for personal service. "It would be intolerable if a man could be compelled by a court of equity to serve another against his will, or if a man could be compelled to retain in his employ one he does not want; courts of equity exercise no such power and grant no such relief."[14] In the case at bar, damages would have been a proper remedy.

Apparently the Court felt that even though the granting of specific performance of a personal employment contract could be considered a violation of public policy, nevertheless, the argument in favor of upholding arbitration awards outweighed those presented for vacating such an award.

STATE NOT LIABLE FOR NEGLIGENCE OF DOCTOR EXAMINING PRIZE FIGHTER

The question of whether the State of New York is liable for the negligence of a doctor who examines price fighters prior to a fight was recently presented to the Court of Appeals in the case of *Rosensweig v. State*.[15] The boxer in question went into a coma and died after being knocked out in an authorized boxing match in New York City. His administrator alleged that the doctor who had examined him was negligent. The basis of his claim was that there was a failure to determine that brain damage caused prior to the fatal fight had rendered the deceased physically unfit to fight. Claiming that the examining physician was an agent of the State, the plaintiff attempted to impute negligence to it.

The Trial Court judgment for the administrator, was the result of finding the doctor an agent of the State and finding him negligent.[16] The Appellate Division reversed, holding the proof insufficient as a matter of law to find the doctor negligent.[17] Without reaching the question of negligence, the Court of

13. Boyer v. Western Union Tel. Co., 124 Fed. 246 (C.C. Mo. 1903).
14. In re Publishers Ass'n., 280 App. Div. 500, 114 N.Y.S.2d 401 (1st Dep't 1952).
15. 5 N.Y.2d 404, 185 N.Y.S.2d 521 (1959).
16. 208 Misc. 1065, 146 N.Y.2d 589 (Ct. Cl. 1955).
17. 5 A.D.2d 293, 171 N.Y.S.2d 912 (3d Dep't 1958).