

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DARNELL WATKINS : CIVIL ACTION
 :
 v. :
 :
 K-MART CORPORATION, et al. : 96-4566

MEMORANDUM AND ORDER

HUTTON, J.

September 17, 1997

Presently before the Court are Third Party Defendant Digby Truck Line, Inc.'s ("Digby") Motion to Strike Demand for Trial De Novo, or in the Alternative to Permit Trial On the Liability and Damage Issues as Between K-Mart Corporation and Digby Truck Line, Inc., and Defendant K-Mart Corporation's ("K-Mart") response thereto.

I. BACKGROUND

This case presents the issue of whether under Local Rule 53.2(6) a party who has won in court-annexed arbitration as to damages may seek a trial de novo solely as to liability.

Plaintiff, Darnell Watkins ("Watkins"), was an employee of Digby. Digby had a contract with Defendant K-Mart, under which Digby was a carrier for K-Mart. It is undisputed that Watkins was injured within the scope of his employment at Digby while making a delivery at a K-Mart distribution center.

Watkins sued K-Mart, and K-Mart in turn impleaded Digby pursuant to an indemnification clause in the contract between them.

The Court referred the case to court-annexed arbitration under Local Rule of Civil Procedure 53.2.

Watkins did not appear at the March 7, 1997 arbitration. Nevertheless, Digby and K-Mart litigated the indemnification issue. The arbitrators found in favor of K-Mart as to liability, but, as K-Mart did not bring documentation to support its claim for litigation expenses, found Digby liable for zero damages.

K-Mart demanded a trial de novo on April 7, 1997, just within the 30 day limitations period. See E.D.Pa. R. 53.2(6). In its demand, it requested trial de novo only with respect to the determination of damages. Under Rule 53.2(6), any portion of an arbitration award for which trial de novo has not be timely sought becomes a final judgment. Therefore, K-Mart sought to have the liability determination in its favor become final, and relitigate only the issue of damages.

Digby now argues that K-Mart should not be entitled to restrict the trial de novo to the damages issue alone. It states that it had no reason to appeal the liability determination because it effectively had won the arbitration by being found liable for zero damages. It further states that its failure to demand a trial de novo as to liability within the limitations period was due solely to the fact that K-Mart served Digby its

own demand for trial de novo after the limitations period had already expired.

II. DISCUSSION

In its present Motion, Digby requests that: (1) K-Mart's demand for trial de novo be stricken due to K-Mart's alleged failure to participate in the arbitration in a "meaningful manner;" (2) K-Mart should not be permitted to obtain a trial de novo solely on the issue of damages; and (3) should the Court find that K-Mart can pluck out only the damages issue, Digby should be granted a trial de novo as to liability in order to avoid injustice. These contentions will be addressed in turn.

A. Digby's Motion to Strike Denied

The first issue is whether K-Mart's performance at the arbitration was so deficient as to justify striking its present motion for a trial de novo.

Local Rule of Civil Procedure 53.2(5)(C) provides: "In the event ... that a party fails to participate in the trial in a meaningful manner, the Court may impose appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo filed by that party." Digby argues that K-Mart's failure to produce evidence of its litigation expenses constituted a failure to participate at trial in a "meaningful manner," requiring the Court to strike K-Mart's demand for trial

de novo. However, Digby cites no authority to suggest that K-Mart's performance was so deficient as to fall within the meaning of the Rule. The single unpublished opinion it cites, McHale v. Alcon Surgical, Inc., 1992 WL 99658 (E.D.Pa. April 29, 1992) (finding participation not meaningful where plaintiffs elected to take Mexican vacation rather than appear at arbitration and plaintiffs' counsel rested case after fifteen minutes), was reversed on appeal. See McHale v. Alcon Surgical, Inc., 993 F.2d 224 (3d Cir. 1993).

The Court finds that K-Mart's performance at the arbitration was sufficiently "meaningful" to avoid the striking of its demand for trial de novo. See Gaeth v. Wagner, 159 F.R.D. 20, 21 (E.D.Pa. 1994) (participation in arbitration sufficient where defendant presented no witnesses or documentary or tangible evidence); David v. Klimowicz, 1988 WL 74896, *2 (E.D.Pa. July 12, 1988) (plaintiff not barred from receiving trial de novo where neither she nor her attorneys appeared at arbitration). As the Honorable Stewart Dalzell noted in McHale, Local Rule 53.2(5)(C)'s purpose is only to discourage parties from going through the motions of arbitration and then demand a trial de novo. See McHale, 1992 WL 99658 at *2. Such conduct would frustrate the efficiency goals of court-annexed arbitration. Here, K-Mart litigated the dispute in a meaningful manner-- actually winning on the question of liability. Its failure to

produce sufficient evidence of its litigation expenses is not the kind of perfunctory conduct that the Rule was intended to deter. Therefore, Digby's motion to strike K-Mart's demand for trial de novo is denied.

B. Liability and Damage Issues Not Segregable

The second issue is whether K-Mart can obtain a trial de novo solely on the issue of damages.

Local Rule of Civil Procedure 53.2(6) provides in relevant part:

In a case involving multiple claims and parties, any segregable part of an arbitration award, concerning which a trial de novo has not been demanded by the aggrieved party before the expiration of the thirty (30) day time period provided for filing a demand for trial de novo, shall become part of the final judgment with the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal.

In its demand for trial de novo, K-Mart sought to "segregate" the damages issue that it lost at arbitration from the liability issue that it won. In the present motion, Digby argues that the Rule should be interpreted to provide for the re-litigation of wholly segregable claims, not the separate liability and damage issues within a single claim.

There is no case law interpreting this aspect of Rule 53.2(6), and neither party offers any legal authority in support of its position. In a similar case, the Middle District of Florida held that a party could not obtain a trial de novo only as to its own claim, excluding the opposing party's counterclaim.

See Action Orthopedics, Inc. v. Techmedica, Inc., 775 F. Supp. 390, 391 (M.D.Fla. 1991). However, in Action Orthopedics, the language of the rule at issue was very different from Rule 53.2(6). It stated: "Upon demand for trial de novo the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration." Id. In so deciding, however, the Court made an argument applicable to the present situation:

Allowing demand for trial de novo only as to a portion of an arbitration award would greatly weaken the Court Annexed Arbitration Program...[P]arties would not be able to rely on an arbitration award as the final word in their litigation with another party. Often, a party is willing to accept an arbitration award as to the entire conflict with another party as long as the whole matter is resolved. However, allowing partial demands for trial de novo would encourage lawyers to wait until the last hour to file a demand for trial de novo as to a portion of the arbitration award in order to gain a strategic advantage. Allowing such a demand places the party, who is willing to accept the arbitration award as to the entire action, at a disadvantage. They would be time barred from filing a demand for trial de novo as to the rest of the arbitration award that is not beneficial to their interests. This clearly creates an unjust result, and would likely lead to all parties filing a demand for trial de novo when they are only slightly dissatisfied with the arbitration results. The benefits of arbitration would be nonexistent.

The Court finds this reasoning persuasive in the present case. Here, K-Mart engaged in precisely the litigation strategy predicted in Action Orthopedics. If condoned, this conduct would undermine the efficiency goals of court-annexed arbitration. Rule 53.2(6) could not have been intended to encourage this result. Therefore, the Court finds that Rule 53.2(6) does not authorize the "segregation" of the liability and damages components of an arbitration award for trial de novo. Accordingly, K-Mart is not entitled to restrict the scope of its

trial de novo to the issue of damages, and must allow Digby a second bite at the liability question.

As the Court has granted Digby's motion on the above ground, it need not reach Digby's third argument that it is entitled to trial de novo in order to avoid an unjust result.

An appropriate Order follows.

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O R D E R

AND NOW, this 17th day of September, 1997, upon consideration of Third Party Defendant Digby Truck Line, Inc.'s Motion to Strike Demand for Trial De Novo, or in the Alternative to Permit Trial On the Liability and Damage Issues as Between K-Mart Corporation and Digby Truck Line, Inc., IT IS HEREBY ORDERED that Third Party Defendant's Motion is **GRANTED**.

BY THE COURT:

HERBERT J. HUTTON, J.