



grievance procedure for the resolution of "any differences, disputes or complaints aris[ing] over the interpretation or application of the contents of this Agreement." Id. exh. a, at 6. In the event that the parties were unable to settle a grievance, Article 19 of the agreement directed that the matter "shall be submitted to arbitration." Id. at 7. Article 19, paragraph 4:

The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement; nor shall he substitute his discretion for that of the Company or the Union where such discretion has been retained by the Company or the Union; nor shall he exercise any responsibility or function of the Company or the Union.

Id. at 8.

Paragraph 1 of Article 16 (Management Rights):

The management of the Company and the direction of the workforce, including but not limited to the right to plan, direct and control all operations are the sole rights of the Employer.

Id. at 6.

Article 21 - discharge:

Employer may discharge employees for reasonable cause. Among the reasons providing reasonable cause for dismissal, but not limited to these reasons, shall be the following:

\* \* \* \*

11. Failure to perform work assigned satisfactorily.

Id. at 10.

On February 25, 1997 defendant filed a grievance relating to the discharge of Susan Thompson, an employee covered by the

agreement. Compl. ¶ 6. The employee was a "scanning coordinator" who inspected products for damage or outdatedness. Her employer ascertained that she had erroneously processed a package of undamaged and unspoiled meat valued at \$175 for return to the supplier. As a result, she was suspended for three days and, on further investigation, discharged.<sup>2</sup> Id. exh. b, Arbitration opinion and award (Arb.), at 2-3.

Unable to resolve the grievance, the parties submitted the following questions to arbitration: "Was the Grievant discharged for reasonable cause? If not, what shall be the remedy?" Id. at 1.

Upon hearing, the arbitrator rendered an award and opinion, dated April 22, 1998, upholding the grievance. The award reduced the discharge to the three-day suspension, granted back pay and benefits, and directed reinstatement. Arb. at 9. The arbitrator did not credit the employee's testimony that the meat was unsaleable; and found that "Grievant allowed the beef steaks<sup>3</sup> to be processed for return due to an error on her behalf." Id. at 6. Nevertheless, he did not find reasonable cause for discharge:

After careful consideration, I am persuaded by the Union that the Employer cannot meet its burden of establishing reasonable cause for Grievant's termination. While Article 21 of

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<sup>2</sup> The record does not disclose how long Ms. Thompson had been in plaintiff's employ or any negative information about her job performance other than this one occasion.

<sup>3</sup> According to plaintiff's response, the arbitrator's opinion incorrectly identified the product as a box of "beef steaks" rather than "beef sticks." Response, at 5 n.4.

the Contract lists "failure to perform work satisfactorily" as among the reasons providing reasonable cause for dismissal, I cannot conclude from this language that it was the intent of the parties that any time an employee makes an honest mistake in performing his or her work assignment that individual is subject to discharge. Such a draconian result is on its face arbitrary and capricious and therefore not within the discretion of the Employer. Thus, I in no way violate Article 19, Section 4 of the Contract by concluding that proper cause did not exist to terminate an employee for a single instance of poor work performance.<sup>4</sup>

Id. at 6-7.

The district court's authority to set aside an arbitrator's award is narrowly circumscribed:

As we explained in News America Publications, Inc. v. Newark Typographical Union, Local No. 103, 918 F.2d 21 (3d Cir. 1990), "courts play an extremely limited role in resolving labor disputes." Id. at 24. "A court may not overrule an arbitrator simply because it disagrees with the arbitrator's construction of the contract . . . or because it believes its interpretation of the contract is better than that of the arbitrator." Id. (internal citation omitted). Rather, "[a]s long as the arbitrator has arguably construed or applied the contract, the award must be enforced, regardless of the fact that a court is convinced that [the] arbitrator committed serious error." Id. Thus, "there must be absolutely no support at all in the record justifying the arbitrator's determinations for a court to deny enforcement of an award." Id. "[O]nly where there is a manifest disregard of the agreement, totally unsupported by principles

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<sup>4</sup> The opinion also pointed out that (1) Thompson was a long-term employee with "little, if any" relevant disciplinary history; (2) there was no reason to believe her mistake was a dishonest one; and (3) plaintiff had come forward with no evidence beyond that used to justify the initial three-day suspension. Arb. at 8.

of contract construction and the law of the shop, may a reviewing court disturb the award." Id. (internal quotations omitted). Thus, as we wryly concluded, "[i]t should be clear that the test used to probe the validity of a labor arbitrator's decision is a singularly undemanding one." Id.

United Transportation Union Local 1589 v. Suburban Transit Corp., 51 F.3d 376, 379 (3d Cir. 1995).

According to plaintiff employer, once the arbitrator found that the employee improperly processed the meat, he had no discretion, under Article 19, ¶ 4 of the collective bargaining agreement, to set aside the employer's decision to terminate. That finding, it is argued, constituted "failure to perform work assigned satisfactorily," which, in turn, is one of the 13 examples of "reasonable cause for dismissal" listed in the agreement. Compl. ¶¶ 11-13. The employer contends that the arbitrator thereby ignored the plain language of the agreement and created a progressive discipline requirement where none existed. Response, at 1.

However, "[i]n a proper case an arbitrator . . . may construe a 'just cause' provision of a labor contract to include a progressive discipline requirement and may determine that certain conduct is 'just cause' for discipline but not for discharge." Suburban Transit Corp., 51 F.3d at 381 (quoting Arco Polymers, Inc. v. Local 8-74, 671 F.2d 752, 756 (3d Cir.), cert. denied 459 U.S. 828, 103 S. Ct. 63, 74 L. Ed.2d 65 (1982)) (further citation omitted). This is such a case. Article 21 of the agreement is a non-mandatory discharge provision: It states, permissively, that

the “[e]mployer may discharge employees for reasonable cause.” Compl., exh. a, at 10. In paragraph 11, “[f]ailure to perform work assigned satisfactorily” is given as one of the circumstances providing “reasonable cause for dismissal” Id. The arbitrator found that Thompson’s behavior was an “honest mistake . . . a single instance of poor work performance,” and that, on its face, paragraph 11 was applicable. Arb. at 7. The arbitrator concluded, however, that the parties could not have intended that an employee would be subject to discharge whenever the employee made an honest mistake regardless of its magnitude.<sup>5</sup> Id.

Here, the arbitrator could well have decided that the ambiguity in the word “satisfactorily” – and its potential contradiction of “reasonable cause” – required that discharges under paragraph 11 be subject to a reasonableness review. Id. Otherwise, the employer – as the arbitrator ruled had occurred here – could read and apply the paragraph in an arbitrary or capricious manner and vitiate the standard of “reasonable cause” altogether.<sup>6</sup>

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<sup>5</sup> That the opinion did not explain the arbitrator’s reasoning in detail is insufficient to justify setting aside the award. See Arco-Polymers, 671 F.2d at 756 (“The fact that the arbitrator wrote an opinion, albeit one that might be viewed as confusing and subject to various interpretations, should not cause the award to be vacated. The court should not substitute its interpretation of a contract for that of the arbitrator simply because the arbitrator’s analysis is opaque.”) (citation omitted). “[T]he court is limited to the inquiry whether the arbitrator could possibly have made a contract interpretation that supports his award.” Id. at 756 n.3.

<sup>6</sup> Most of the other examples given in Article 21 as “reasonable cause for discharge” could be stretched to fit under  
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Moreover, since by its terms the paragraph does not set forth a complete list of grounds for discharge, "reasonable cause," in its generic sense, which is the substance of its topical, or thematic, sentence, should inferentially govern the entire provision.

Given this analysis, the arbitrator's decision appears to have "dr[awn] its essence" from the agreement. It construed the "reasonable cause" requirement as an equitable standard to be inherent in an otherwise vague and ambiguous and potentially contradictory definitional example. Suburban Transit Corp., 51 F.3d at 379-80 ("An arbitration award draws its essence from the bargaining agreement if the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention."). It is within the province of the arbitrator to interpret an agreement as to give rational meaning to ambiguous wording or to a contradiction. See Exxon Shipping Co. v. Exxon Seamen's Union, 73 F.3d 1287, 1296 (3d Cir.) (ambiguity), cert. denied sub nom Seariver Maritime, Inc. v. Exxon Seamen's Union, \_\_\_ U.S. \_\_\_, 116 S. Ct. 2515, 135 L. Ed.2d 203 (1996); F.W. Woolworth Co. v. Miscellaneous Warehousemen's Union, Local No. 781, 629 F.2d 1204, 1216 (7th Cir. 1980) ("The provisions at issue were somewhat contradictory so it was appropriate for the arbitrator to interpret

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<sup>6</sup>(...continued)  
the broad umbrella of "unsatisfactory work performance." See, e.g., id. ¶¶ 1-2, 4-7, 9, 12 (refusal to perform assigned duties; dishonesty; fighting or abusive language; deliberate damage to employer's property or goods; creating safety hazards; reporting for work under influence of drugs or intoxicants; lateness).

them and resolve the ambiguity. His interpretation was rational so it should not have been rejected by the district court.”), cert. denied sub nom. F.W. Woolworth Co. v. Fell, 451 U.S. 937, 101 S. Ct. 2016, 68 L. Ed.2d 324 (1981).

“[T]he arbitrator [has] the power to determine when a matter is subject to Company discretion. When two plausible interpretations of a clause of a collective bargaining agreement exist, an arbitrator’s choice of one or the other ought to be honored.” Arco-Polymers, 671 F.2d at 757 (quoting IAM, Local 389 v. San Diego Marine Construction Corp., 620 F.2d 736, 738-39 (9th Cir. 1980) (emphasis in original); see also id. (“In the present case the arbitrator could fairly construe the contract to confer upon himself the power to determine whether under the particular facts presented the employee was ‘properly’ discharged, even though he was technically found guilty of committing the act of striking the inspector.”) (quoting Timken Co. v. United Steelworkers of America, 492 F.2d 1178, 1180 (6th Cir. 1974))).

Furthermore, “no provision of the contract precludes review of such dismissals for just cause.” See Super Tire Engineering Co. v. Teamsters Local Union No 676, 721 F.2d 121, 124 (3d Cir. 1983), cert. denied 469 U.S. 817, 105 S. Ct. 83, 83 L. Ed.2d 31 (1984). Article 21 is permissive, non-exhaustive, and does not limit the arbitrator’s function to mere fact finding, see, e.g., Physicians and Surgeons Community Hosp. v. Service Employees International Union Local 597, C.A. No. C83-78A, 1983 WL 2026 at \*5 (N.D. Ga. Apr. 3, 1983) (“Had the parties wanted to limit the

Arbitrator to simply making determinations of the existence of a violation and nothing more, they could easily have done so; however, they did not.”).

Dictum in United Paperworkers International Union v. Misco, 484 U.S. 29, 41-42, 108 S. Ct. 364, 372-73, 98 L. Ed.2d 286 (1987), suggests that discharge determinations may be within the unreviewable discretion of management once an arbitrator finds a violation of a specific “cause[] for discharge” provision. Plaintiff relies on obiter to the same effect in Kane Gas Light and Heating Co. v. International Brotherhood of Firemen and Oilers, Local 112, 687 F.2d 673, 680 (3d Cir. 1982), cert. denied 460 U.S. 1011, 103 S. Ct. 1251, 75 L. Ed.2d 480 (1983), and the holding in Bruce Hardwood Floors v. UBC, Southern Council of Industrial Workers, Local Union No. 2713, 103 F.3d 449, 452 (5th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 118 S. Ct. 329, 139 L. Ed.2d 255 (1997). None of these cases, however, is comparable given the ambiguity and potentially contradictory language present in the collective bargaining agreement in this case.<sup>7</sup>

Accordingly, the award is enforceable, and this action must be dismissed.<sup>8</sup>

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<sup>7</sup> Bruce is also distinguishable because the agreement in that case did not contain a “just cause” provision. See Coca-Cola Bottling Co. of New York, Inc. v. Local Union 1035, 973 F. Supp. 270, 275 (D. Conn. 1997).

<sup>8</sup> Although Misco, Kane, and Bruce are distinguishable, plaintiff’s position can not be categorized as frivolous. Defendant’s request for attorney’s fees and costs, motion, at 9, must therefore be denied. See Mobil Oil Corp. v. Independent Oil (continued...)

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<sup>8</sup>(...continued)

Workers Union, 679 F.2d 299, 305 (3d Cir. 1982) (attorney's fees and costs awardable upon finding that "losing party litigated in bad faith, vexatiously, or for oppressive reasons").