STATE OF MICHIGAN

COURT OF APPEALS

JAMES EDWARD WHITE,

Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED
September 10, 2020

No. 349812
Court of Claims
LC No. 18-000219-MZ

Before: JANSEN, P.J., and K. F. KELLY and CAMERON, JJ.

PER CURIAM.

Plaintiff, James Edward White, appeals as of right the opinion and order of the Court of Claims granting summary disposition in favor of defendant, Michigan State University (MSU), under MCR 2.116(C)(7) (arbitration agreement and immunity granted by law). We affirm.

I. RELEVANT BACKGROUND

Plaintiff was laid off from his position as an Information Technologist with the International Studies Department at MSU in August 2017. At that time, plaintiff paid dues and was represented by the Administrative-Professional Association (APA) in accordance with a Collective-Bargaining Agreement (CBA). MSU paid plaintiff for his unused vacation time in September 2017.[1] However, beginning in December 2017, plaintiff communicated with MSU's Office of Employee Relations (OER) team members regarding his concerns about how his vacation time was paid out. According to plaintiff, he was underpaid for his unused vacation time. Plaintiff sought reinstatement of his vacation time in exchange for the amounts paid, or at minimum, an understanding of how the amount of pay was calculated. After several months of e-mail communications, both plaintiff and the APA were unsuccessful in obtaining the calculations, and plaintiff remained unsatisfied with the explanation he was provided.

[1] Plaintiff accepted a different position with MSU Information Technology in October 2017.

In August 2018, plaintiff filed a claim and an accompanying affidavit in the Small Claims Division of the 54-B District Court, alleging that MSU "provided a payout for vacation earned that fell short of what the actual payment should have been." MSU removed the lawsuit to the Court of Claims and subsequently filed a motion for dismissal of the lawsuit under MCR 2.116(C)(7). The Court of Claims granted MSU's motion for dismissal, noting that while plaintiff pursued the issue with MSU, he failed to adhere to the grievance procedure outlined within the CBA, which included an arbitration agreement. The Court of Claims also noted that dismissal was appropriate because plaintiff did not file a notice of intent with the Court of Claims within one year of the claim's accrual as required by MCL 600.6431(1). This appeal followed.

II. STANDARD OF REVIEW

"This Court reviews de novo the grant or denial of a motion for summary disposition to determine if the moving party is entitled to judgment as a matter of law." *Lowrey v LMPS & LMPJ, Inc.*, 500 Mich 1, 5-6; 890 NW2d 344 (2016). "Under MCR 2.116(C)(7), summary disposition is appropriate if a claim is barred because of an agreement to arbitrate." *Altobelli v Hartmann*, 499 Mich 284, 295; 884 NW2d 537 (2016) (citation and quotation marks omitted). Whether a particular issue is subject to arbitration is reviewed de novo, as is the interpretation of contractual language. *Id*.

III. ANALYSIS

On appeal, plaintiff argues that the Court of Claims erred by granting defendant's motion for dismissal because the dispute at issue, which he frames as a calculation error, does not fall within the scope of the parties' CBA. We disagree.

"[C]ontract principles apply to CBAs just as they do with regard to any other contract." *Kendzierski v Macomb Co*, 503 Mich 296, 313; 931 NW2d 604 (2019). "The goal of contract interpretation is to read the document as a whole and apply the plain language used in order to honor the intent of the parties." *Greenville Lafayette LLC v Elgin State Bank*, 296 Mich App 284, 291; 818 NW2d 460 (2012) (citation omitted). Courts "must enforce the clear and unambiguous language of a contract as it is written." *Id*. (citation omitted). "To ascertain the arbitrability of an issue, [a] court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract." *Fromm v Meemic Ins Co*, 264 Mich App 302, 305-306; 690 NW2d 528 (2004).

In this case, Article 10, § III, ¶ 74 of the CBA establishes a grievance procedure for employees "who feel they have a grievance or complaint alleging a violation, misinterpretation, or a misapplication of this Agreement[.]" Thereafter, ¶ 76 provides: "Any employee having a dispute over the interpretation or application of the terms of this Agreement shall present it to the employer" by submitting it to the CBA's grievance procedures. As relevant to this case, Article 21 of the CBA explicitly covers the topic of vacation pay, explains how vacation time is accrued, and mandates in ¶ 171 that "[a]n Employee will receive payment for unused vacation when terminating employment." Accordingly, plaintiff's dispute concerning his payment for unused vacation time plainly involves the application of ¶ 171 of the CBA.

Article 10 of the CBA unambiguously establishes the various steps in the grievance process. Notably, the CBA provides that if the employee and MSU cannot resolve the grievance during the initial steps of the process, and more specifically, "if the Office of Employee Relations' answer is unacceptable," the final step is to submit the dispute to binding arbitration. The only exclusions identified from the arbitration process include "disputes and unresolved grievances concerning merit increase decisions and those matters provided for in provisions on Probationary Employees, Filling Vacant Positions and Classification/Reclassification of Positions." Further, the CBA provides that the "arbitrator's decision shall be final and binding upon the [APA] and its members, the Employee or Employees involved, and [MSU]."

Plaintiff does not dispute that this greivance process was not followed. Instead, he argues that because he was not terminated, but rather laid off, MSU's payout was "voluntary" and therefore outside of the scope of the CBA. However, this argument is unavailing. There is no question that the subject of calculation and payment of vacation time falls within Article 21 of the CBA, and any issues related to the application of that policy remain subject to the CBA's grievance procedures. Moreover, disputes related to vacation pay are not explicitly excluded from the arbitration procedure. Accordingly, whether the payment was required because of termination or was provided voluntarily by MSU, the CBA would continue to apply. Accordingly, we conclude that the Court of Claims did not err by determining that plaintiff's claim was subject to the terms of the CBA and thus was subject to dismissal because of plaintiff's failure to follow the required grievance procedure.

Alternatively, plaintiff suggests that he followed an informal grievance process, and both the APA and MSU failed to pursue arbitration, instead informing him that the case was closed and no further assistance could be provided. Plaintiff posits that given these circumstances, he was entitled to pursue other remedies. However, our review of the record suggests that plaintiff never filed a written grievance and instead relied on e-mails for communication. We find no support for plaintiff's suggestion that this informal process was sufficient to establish an actual grievance. By failing to engage the proper procedure, plaintiff did not reach the level of action whereby the APA would be able to request arbitration. Moreover, there is nothing within the CBA that suggests that MSU had any requirement to suggest arbitration. The grievance process requires the "aggrieved employee" to initiate the process and escalate it as necessary. In sum, plaintiff's failure to pursue the process outlined in the CBA was sufficient to warrant dismissal of the lawsuit.

Because we conclude that the Court of Claims properly dismissed plaintiff's complaint, we need not address plaintiff's other arguments.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Thomas C. Cameron