Employers Handed Narrow Arbitration Decision Victory

COULD THE DECISION COME BACK TO HAUNT EMPLOYERS?

Insights
6.21.10

In a narrow 5-4 decision, the Supreme Court handed employers yet another victory in the area of employment arbitration agreements today by holding that, in many circumstances, the issue of whether the agreement is enforceable should be made by an arbitrator and not a court of law. *Rent-A-Center, West, Inc. v. Jackson.*

Although this was not a complete victory for employers, it continues the trend of upholding arbitration agreements in the employment arena and should give further support for those employers who choose this alternative form of dispute resolution. However, it might also lend more support to those in Congress who wish to curtail employer rights by passing the Arbitration Fairness Act, which could eliminate all pre-dispute arbitration agreements.

Background: Can An Employment Dispute Be Sent To Arbitration?
This case began much like so many other cases involving arbitration issues. In early 2007, Antonio Jackson filed a race discrimination lawsuit against his former employer, Rent-A-Center, West, in federal court in Nevada. Four years earlier, Jackson had signed an arbitration agreement whereby all disputes arising out of his employment would be arbitrated in a private forum. Like many employers, Rent-A-Center required all employees to sign these agreements as a condition of their employment, believing that arbitration was a more efficient way to solve employment disputes. Importantly, the agreement contained a clause that required the selected arbitrator to be the sole authority to resolve any disputes about the agreement, including whether the agreement itself was valid (sometimes called a "delegation" provision).

Rent-A-Center filed a motion in court to dismiss the proceedings so that the dispute could be handled in private arbitration, and Jackson opposed the motion, claiming that the entire arbitration agreement was "unconscionable" and therefore unenforceable. He noted, for example, that the agreement required the parties to split the arbitration fees, which he felt was unfair. The federal district court granted the motion, pointing out that the agreement clearly gave the arbitrator the exclusive authority to decide whether the agreement was enforceable.

The U.S. Court of Appeals for the 9th Circuit reversed the lower court and ordered the case to be decided by the trial court and not an arbitrator. A divided panel of 9th Circuit judges held that this was a threshold question that should always be decided by a court, since there was a dispute as to

whether the employee had ever assigned to the arbitrator the right to decide his case. Rent-A-Center appealed the case to the U.S. Supreme Court, which accepted review of the case and issued its decision today.

Holding: Arbitrators Can Decide Arbitrability In Many Situations

By a 5-4 ruling, the Supreme Court held that there are times when the question of arbitrability should be decided by the court, but there are other times when that same question should be handled directly by the arbitrator without any court intervention. Noted conservative Justice Antonin Scalia delivered the opinion of the Court, joined by the employer-friendly bloc of Justices Thomas, Alito, and Chief Justice Roberts, and also by the swing vote, Justice Kennedy.

The Court pointed out that there are generally two types of validity challenges that a party could make against an arbitration agreement under the Federal Arbitration Act â€“ one type of challenge specifically addresses whether the delegation provision is enforceable; that is, should the arbitrator be deciding whether the arbitration agreement is valid? The second type of challenge can be made against the agreement as a whole, with a claim that the agreement is unconscionable for any number of different reasons. Sometimes parties claim that the fee-shifting provision renders the agreement invalid, sometimes discovery limitations lead to such challenges, other times there are limitations as to how much a party can recover in the arbitration proceeding.

The key point made by the Court is that only the first type of validity challenge is relevant to a court's determination of whether an arbitration agreement is enforceable, and thus, that is generally the only time that a court should intervene in these types of disputes. In all other circumstances, such as when the party challenges the agreement as a whole, the parties are required to restrict their challenges about the arbitration agreements to the arbitration forum itself.

At its simplest, the Court ruled that if an employee specifically challenges the enforceability of the agreement, a court should consider the challenge; but if an employee challenges the enforceability of the agreement as a whole, the arbitrator should decide whether the agreement is acceptable.

In this specific case, the Court ruled that Jackson challenged the validity of the arbitration agreement as a whole, and thus an arbitrator should decide whether the agreement is enforceable. Although the Court noted that he also specifically challenged the delegation provision, it ruled that he failed to raise that issue in time since he only first made that argument to the Supreme Court and not to the lower court as he should have. The Court then reversed the 9th Circuit's decision (which it has done dozens of times in the recent past) and sent the case back to arbitration. The four remaining justices issued a fairly vigorous dissent, led by outgoing Justice John Paul Stevens and joined by Justices Ginsburg, Breyer and Sotomayor. They argued that the fact that this was an employment arbitration agreement made all the difference, and that it should not be treated just like any other contract. They said that the contracting parties would have likely expected a court to have decided certain issues about the arbitration agreement, not just the "gateway" matters but regarding the enforceability as a whole. The dissenting justices were clearly concerned that

employment arbitration agreements continue to be applied in all too many situations, and that federal courts should be able to insert themselves more fully into employment disputes.

What Does This Mean For Employers?

At first blush, this appears to be another victory for employers. The Court once again upheld the validity of pre-dispute arbitration agreements, and continues to allow employers to force employees to take their employment disputes to private arbitrations and not public courts of law. Those employers who have arbitration agreements in place will want to have them reviewed by their employment counsel to ensure they stand muster under the new decision issued today. By and large, many employers continue to find arbitration proceedings preferable to court proceedings, as they are usually cheaper, more efficient, and lead to more employer victories and fewer large verdicts.

However, because of these very reasons, there has been a growing resistance movement to pre-dispute arbitration agreements in the employment context. Congress has introduced a bill called the Arbitration Fairness Act of 2009 which would render any such pre-dispute arbitration agreement unenforceable (along with certain consumer and franchise arbitration agreements). No doubt the advocates of that proposed legislation will point to today's decision as further evidence of the need for employee protection. One day, employers could look back at the *Rent-A-Center* decision as a hollow victory, one that did nothing more than provide fodder for arbitration opponents in their continued quest to restrict employer rights.

This Legal Alert provides information about a specific Supreme Court case. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.