UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TI GROUP AUTOMOTIVE	:	
	:	
Plaintiff,	:	NO. 3:04cv84 (MRK)
	:	
v.	:	
	:	
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 376 (Jose Carrero Termination) ,	:	
	:	
Defendant.	:	

MEMORANDUM OF DECISION

Pursuant to § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, Plaintiff TI Group Automotive ("TI Group") asks the Court to vacate a labor arbitration award and Defendant United Automobile, Aerospace and Agricultural Implement Workers of America, Local 376 ("Union") cross-moves for confirmation of the award. The parties do not dispute the applicable facts or law. The narrow issue presented is whether the arbitrators' award drew "its essence from the collective bargaining agreement." *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). For the reasons discussed below, the Court DENIES both TI Group's Motion to Vacate Arbitration Award [doc. # 1] and the Union's Cross-Motion to Confirm Arbitration Award [doc. #7], and REMANDS this matter back to the arbitration panel for clarification of its decision.

I.

The facts underlying this dispute are set forth in the arbitration panel's decision. *See* Pl.'s Mem. [doc. #2], Attach. B. TI Group fired former employee Jose Carrero after his tenth absence from work, pursuant to the point-based attendance policy in the collective bargaining agreement ("CBA") between the Union and TI Group. *See* Pl.'s Mem. [doc. #2], Attach. A at 48. Under that policy, employees receive points for tardiness or attendance violations and as they accumulate points, the level of discipline progresses from verbal warnings to termination. The policy calls for termination after an employee accumulates his tenth absence point or thirteenth tardiness point. The policy also lists twelve categories of exceptions, including "Approved Family and Medical Leave Act" (FMLA) absences. *Id*. at 48-49. In addition, the policy states that "[e]mployees who are eligible for the Family and Medical Leave Act have certain other rights and should speak to any member of the Human Resources Department for further information." *Id.* at 49.

Mr. Carrero's tenth absence occurred on October 10, 2002.[1] On that day, Mr. Carrero informed his supervisor that he had to leave work in order to deal with a family emergency because he had just learned that his daughter had been sexually abused. *See* Pl.'s Mem. [doc. #2], Attach B at 2-3. The Director of Human Resources told Mr. Carrero, "If there is anything I can do for you, let me know." However, Mr. Carrero's supervisor warned him that he would be terminated if he left work early and failed to report the next day. *Id*. Because of his daughter,

[1] Mr. Carrero had a history of tardiness and absenteeism during his tenure at TI Group. In the year before his termination, he had been suspended under TI Group's attendance policy as a result of acquiring twelve tardiness points. However, on March 21, 2002, TI Group cleared all previous attendance points for all employees when it signed a new collective bargaining agreement with the Union. *See* Pl.'s Mem. [doc. #2], Attach. B at 2.

Mr. Carrero did leave early and did not report to work the next day. As a result, TI Group fired him. The Union grieved Mr. Carrero's termination and the dispute was submitted to a three-arbitrator panel comprised of a union member, a management member, and a neutral member. The panel unanimously concluded that Mr. Carrero's termination "was not appropriate in this case" and ordered that Mr. Carrero be reinstated, albeit without back pay or benefits. *Id*. TI Group now seeks to vacate the panel's award, while the Union requests confirmation. Mr. Carrero has not returned to work in the interim.

II.

Both the Supreme Court and the Second Circuit have often emphasized the "limited role" courts play when reviewing an arbitration decision made pursuant to a collective bargaining agreement. *See Int'l Bhd. of Elec. Workers, Local 97 v. Niagra Mohawk Power Corp.*, 143 F.3d 704, 714 (2d Cir. 1998). "Courts are not empowered to reexamine the merits of an arbitration award, even though the parties to the agreement may argue that the award arises out of a misinterpretation of the contract or a factual error." *Id.* Instead, "[t]he principal question for the reviewing court is whether the arbitrator's award draws its essence from the collective bargaining agreement, since the arbitrator is not free to merely to dispense his own brand of industrial justice." *Saint Mary Home, Inc. v. Serv. Employees Int'l Union, Dist. 119*, 116 F.3d 41, 44 (2d Cir. 1997) (citing *United Steel Workers of Am.*, 363 U.S. at 597). Under this standard, the Second Circuit has said that "an arbitration award must be upheld when the arbitrator offers even a barely colorable justification for the outcome reached." *Wackenhut Corp. v. Amalgamated Local 515*, 126 F.3d 29, 31-32 (2d Cir. 1997) (internal quotation marks and citations omitted). "As long as the arbitrator is even arguably construing or applying the [collective bargaining

agreement] and acting within the scope of his authority, the fact that the court is convinced that [the arbitrator] committed serious error does not suffice to overturn his decision." *United Paperworkers Int'l Union v. MISCO, Inc.,* 484 U.S. 29, 38 (1987). Furthermore, "[a] mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award." *United Steel Workers of Am.*, 363 U.S. at 598.

III.

In reviewing the panel's decision, the Court is mindful of the high level of deference that it owes the arbitrators' decision. Nevertheless, on its face, the panel's decision appears to be grounded more in the arbitrators' sense of justice and fairness than in the terms of the collective bargaining agreement. Despite stating that "the attendance policy is clear so far as it details the discipline procedure that will be followed" and acknowledging that "the Grievant did leave work when he was told of the consequences of his actions," the panel found that "termination was not appropriate in this case." In reaching this decision, the panel did not cite to any provision or term of the CBA that would justify concluding that Mr. Carrero's termination was inappropriate. Instead, the panel noted the difficult decision that Mr. Carrero faced and stated that "the Director of Human Resources should have allowed some accommodation in this case." *See* Pl.'s Mem., Attach. B at 3.

On its face, therefore, the decision strongly suggests that the panel simply sympathized with Mr. Carrero's difficult situation and believed that some accommodation was "appropriate" even though none was technically available under the terms of the CBA. The fact that the panel chose not to award any back pay or benefits further suggests that the panel understood that TI

Group was justified in terminating Mr. Carrero, for if the termination truly were improper under the CBA, Mr. Carrero presumably would have been entitled to back pay and benefits.

It is not difficult to understand why the panel would be sympathetic to Mr. Carrero's plight. Indeed, if there ever were a case where some relief from the attendance policy would be appropriate, this is that case. However, neither arbitrators nor courts have the authority to fashion exceptions to the attendance policy that are not contained in the CBA itself. Therefore, if the arbitrators did, in fact, base their award on "some body of thought, or feeling, or policy, or law that is outside the contract (and not incorporated in it by reference), " the arbitral award could not stand. *Harry Hoffman Printing, Inc. v. Graphic Comm. Int'l Union, Local 261,* 950 F.2d 95, 98 (2d Cir. 1991) (internal quotation marks and citations omitted). For arbitrators are not empowered to "dispense [their] own brand of industrial justice." *United Steel Workers of Am.*, 363 U.S. at 597. *See also, Int'l Bhd. of Teamsters v. Univ. of St. Thomas*, 894 F. Supp. 346 (D. Minn.), *aff'd* 62 F.3d 1421 (8th Cir. 1994) (vacating arbitration award where arbitrator found that sleeping on the job was normally a legitimate reason for termination under the CBA, but reinstated employee caught sleeping on the job because employer had not disciplined employee for sleeping on the job in the past).

That said, the Court does not believe it can vacate the arbitrators' award in this case because it is possible that the arbitrators concluded (or even now could conclude) that Mr. Carrero's absence on October 10 fell within the FMLA exception that is contained in the CBA's attendance policy. And if the panel's award was based upon the FMLA exception, the Court would be required to confirm the award even if the panel erred in its construction of the

exception.[2] *See United Paperworkers Int'l Union,* 484 U.S. at 38 (A court must enforce an award "as long as the arbitrator is even arguably construing or applying the contract and acting with the scope of his authority."); *Wackenhut*, 126 F.3d at 31 ("[T]he contractual theory of arbitration, which is reflected in these decisions, requires a reviewing court to affirm an award it views as incorrect – even very incorrect – so long as the decision is plausibly grounded in the parties' agreement.").

While the Union argues that the arbitrators "arguably" grounded their decision in the FMLA exception and that is all that is needed to require confirmation of the decision, the Court believes that it is not at all clear from the face of the decision itself whether the panel even considered the FMLA exception in connection with the October 10 absence or what the panel's conclusion was regarding the applicability of that exception. *See Americas Ins. Corp. v. Gould*, 774 F.2d 64, 67 (2d Cir. 1985) ("[I]t is not [a reviewing court's] place to determine the intent of an arbitrator when the award fails to make the arbitrator's intent clear."). Given the lack of clarity in the panel's decision on this point, and also given the fact that if the panel did base its decision on the FMLA exception even TI Group concedes that the Court would be required to confirm the panel's decision, the Court believes that it is best to remand the matter to the panel for clarification of its decision.

The Court recognizes that ordinarily when reviewing an arbitration award, a court must

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[2] The FMLA requires an employer to grant leave to employee in order to care for a child with a serious health condition. 29 U.S.C. § 2612(a)(c). The record does not disclose and the Court does not express an opinion as to whether Mr. Carrero's daughter suffered from a "serious health condition" as a result of abuse. It is worth noting that at least one court has determined that a child who had been sexually abused did not have a serious health condition for purposes of the FMLA. *See Martyszenko v. Safeway, Inc.*, 120 F.3d 120 (8th Cir. 1997).

either enforce or vacate the award in order to preserve the finality of the arbitration process. In a labor arbitration, however, courts have some leeway to remand in appropriate cases. *See Grand Rapids Die Casting Corp. v. Local Union No. 159*, 684 F.2d 413, 416 (6th Cir. 1982) ("The federal common law of labor has developed to give federal courts the power to remand to the arbitrator when appropriate."). As the Second Circuit has expressly held "courts on occasion may remand [labor arbitration] awards to arbitrators to clarify the meaning or effect of an award, or to determine whether an arbitrator has in some way exceeded his powers." *Siegel v. Titan Indus. Corp.*, 779 F.2d 891, 894 (2d Cir. 1985) (internal citations omitted). Particularly where, as in this case, "the basis for an arbitrator's decision is unclear, but the arbitrator's opinion suggests that the decision does not draw its essence from the collective bargaining agreement, remand is appropriate to have the arbitrator clarify the basis for his or her decision." *Young Radiator Co. v. Int'l Union*, 734 F.2d 321, 326 n.5 (7th Cir. 1984) (cited in *Siegel*, 779 F.2d at 894); *see Poland Spring Corp. v. United Food & Commercial Workers Int'l Union*, 314 F.3d 29, 40 n.5 ("[R]emand to the arbitrator [for clarification] is preferable to reversal.").

"A remand for clarification in such circumstances would not improperly require arbitrators to reveal their reasons, but would simply require them to fulfill their obligation to explain the award sufficiently to permit effective judicial review." *Siegel*, 779 F.2d at 894; *see also Brookdale Hosp. Med. Ctr. v. Local 1199*, 107 F. Supp.2d 283, 292-93 (S.D.N.Y. 2000) ("A proper resolution of the present dispute requires a remand to [the arbitrator] so that she may clarify in writing the factual predicate for her findings."). Therefore, the Court will exercise its

authority to remand this case to the panel for clarification.[3]

IV.

For the reasons stated, the Court DENIES TI Group's Motion to Vacate Arbitration Award [doc. # 1] and the Union's Cross-Motion to Confirm Arbitration Award [doc. #7], and REMANDS this matter back to the arbitration panel for clarification of its decision. The Clerk is directed to administratively close this file, subject to reopening, if necessary, after the arbitration panel clarifies its decision.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: September 27, 2004.

[3] On remand, the panel may wish to address whether the FMLA exception was even raised by the Union and if it was not, whether it would be appropriate for the panel to allow the Union to raise that issue at this late date. This Court expresses no view on that subject, nor on whether the panel on remand should allow the parties to submit supplemental briefing addressed to the FMLA exception. These are matters solely for the arbitration panel to determine.