FILED
MAR 31 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JERRY SABATKA,
Plaintiff-Appellant,
vs.
IOWA POWER AND LIGHT COMPANY,
Defendant-Appellee.

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Filed March 31, 1986

5-719
85-890

Appeal from the Iowa District Court for Pottawattamie County (No. 55905) E. F. Hanson, Judge.

Plaintiff appeals from summary judgment for defendant on a wrongful discharge action. **AFFIRMED.**

Lyle A. Rodenburg, Council Bluffs, for plaintiff-appellant.

G. William Smits, of Stuart, Tinley, Peters, Thorn, Smits & Sens, Council Bluffs, for defendant-appellee.

Heard by Oxberger, C.J., and Hayden, and Sackett, JJ.

exists. Iowa R. Civ. P. 237(c). The issue is whether Iowa Power was entitled to judgment as a matter of law based on the prior arbitration award. We state, as did the district court:

> A court's inquiry in a case which has gone to binding arbitration is limited to whether the grievance is arbitrable, and whether the decision of the arbitrator draws its essence from the agreement. Once these two elements are established, the court looks no further.

Woodruff v. Associated Grocers, 364 N.W.2d 215, 218 (Iowa 1985). In Woodruff, the court held summary judgment was proper in a wrongful discharge action where an arbitration award had already been made under a collective bargaining agreement and the arbitrator's decision had been that just cause existed for dismissal. Id.

Under the subsections of the collective bargaining agreement previously set forth in this opinion, we find the arbitrators had the right to decide the issue of whether Sabatka was fired for just cause. The arbitrators' decision "drew its essence" from the collective bargaining agreement and was binding on all the parties.

We affirm the district court's grant of summary judgment.

AFFIRMED.

Sabatka argues Iowa Code section 679A.1(2)(b) specifically excludes employer-employee contracts from the arbitration provisions of chapter 679A. Section 679A.1 states:

> 1. A written agreement to submit to arbitration an existing controversy is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the written agreement.
>
> 2. A provision in a written contract to submit to arbitration a future controversy arising between the parties is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the contract. *This subsection shall not apply to any of the following:*
>
> a. A contract of adhesion.
>
> b. A contract between employers and employees.
>
> c. Unless otherwise provided in a separate writing executed by all parties to the contract, any claim sounding in tort whether or not involving a breach of contract.

A recent Iowa Supreme Court case in interpreting this section has held "the exclusion of collective bargaining agreements contained in section 679A.1-(2)(b) affects only the enforceability of agreements to arbitrate contained therein." International Ass'n of Machinists & Aerospace Workers v. Victor Fluid Power Co., 369 N.W.2d 805, 808 (Iowa 1985). If the party participates in the arbitration hearing without raising the objection no enforceable agreement to arbitrate exists, the party waives any objection to submission of the dispute to arbitration. Id. Therefore, after the labor arbitration award is made, it is subject to the provisions of chapter 679A. Id.

Sabatka failed to pursue the remedies under chapter 679A for vacating or modifying the arbitration award. He cannot now claim that this arbitration decision is not binding upon him. We find the district court properly applied chapter 679A provisions to this case.

Sabatka also claims the court erred in granting summary judgment. A movant for summary judgment must show no genuine issue of material fact

The union filed a grievance against Iowa Power on behalf of Sabatka and the matter was set for arbitration. A hearing was held and the arbitrators' opinion stated Iowa Power had just cause to discharge Sabatka. The union's grievance was denied in the arbitrators' opinion and award dated April 9, 1984.

Sabatka filed this present action for wrongful discharge on February 25, 1985. Iowa Power answered claiming an action for a wrongful discharge was barred by the arbitrators' opinion pursuant to the collective bargaining agreement. In granting Iowa Power's motion for summary judgment, the district court found "this matter is controlled by the provisions of Woodruff vs. Associated Grocers of Iowa 364 NW2d 215 (Ia. 1985) [sic]." In its order on motion for more specific findings and conclusions, the district court stated in part:

> The Plaintiff has not denied that the grievance was arbitrable nor that the decision drew its essence from the binding arbitration agreement.
>
> A court's inquiry in a case which has gone to binding arbitration is limited to whether the grievance is arbitrable, and whether the decision of the arbitrator draws its essence from the agreement. Once these two elements are established, the court looks no farther." Woodruff vs. Associated Grocers of Iowa, Inc. (Ia. 1985).
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> Plaintiff has alleged fraud in the process and errors in procedure. Errors in procedure would inure in the decision.
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> If Plaintiff has an action in damages for fraud, he has selected the wrong vehicle for pursuit of same.
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> The Order Sustaining the Summary Judgment is reaffirmed.

Sabatka has appealed contending: (1) the district court had no subject matter jurisdiction to apply Iowa Code chapter 679A since employer-employee relations are excluded from its provisions, and (2) the district court erred in granting the summary judgment.

Plaintiff Sabatka has appealed from the district court's order granting a summary judgment for defendant Iowa Power and Light Company. We affirm the decision of the district court.

Sabatka was fired from his employment with Iowa Power based upon an *allegation of theft*. Sabatka was a union employee under a collective bargaining agreement. Article III Grievance Procedure, section 3.1 of this collective bargaining agreement provided: "The Company shall not discharge, demote or suspend a regular employee *without just cause*." Other sections in Article III provided:

> 3.2. In respect to discharge, at least one warning notice of the complaint against such regular employee shall be given to the employee in writing and a copy of *same* sent the Business Manager of the Union, except no warning notice need be given to an employee before his discharge if the cause of the discharge is physical violence, dishonesty, drunkenness while on duty, or being in the possession of illegal drugs on Company property or at work under the influence of illegal drugs. Warning notices of more than five (5) years old will not be used as a basis for discharge.
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> Section 4. A grievance relating to disciplinary suspension, demotion or discharge shall originate at Step 2. If the charges are not sustained in the grievance procedure or through arbitration, the employee's record shall be cleared of such charges and he shall be reimbursed for loss of wages, if any.

Article IV. Arbitration, section 1.1 stated:

> Questions or disputes regarding the interpretation, application or claimed violation of the Agreement may be submitted to an *arbitration board* for decision provided there has been full compliance with the Grievance Procedure. The power and authority of the arbitration board shall be limited to an interpretation *of this Agreement* and to the application of its provisions to the particular grievance case under consideration. The decision of the arbitration board, upon the question submitted, *shall* be final and binding on both parties. The arbitration board shall have no authority to add to, subtract from, or to modify any of the terms and provisions of this Agreement. [emphasis added].