

FILED

JAN 27 1988

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**OVER THE ROAD, CITY TRANSFER)
DRIVERS, HELPERS, DOCKMEN,)
WAREHOUSEMEN, INSIDE WORKERS,)
STATE, COUNTY, AND MUNICIPAL)
EMPLOYEES, TEAMSTERS LOCAL 147,)**

156

Plaintiff-Appellant,)

Filed January 27, 1988

vs.)

VITALIS TRUCK LINES,)

7-448

Defendant-Appellee.)

87-411

Appeal from the Iowa District Court for Polk County (No. CL60-35413),
Gene Needles, Judge.

Plaintiff appeals from a district court decision which disallowed damages
for one employee and restricted them for another in plaintiff union's action
seeking to enforce and recover damages for grievance committee awards in
favor of the employee-members. **REVERSED AND REMANDED.**

Neil A. Barrick of Barrick Law Office, Des Moines, for plaintiff-appellant.

Mark C. Feldman of Beving, Swanson & Forrest, Des Moines, for defendant-
appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Plaintiff appeals from a district court decision which disallowed damages for one employee and restricted them for another in plaintiff union's action seeking to enforce and recover damages for grievance committee awards in favor of the employee-members. We reverse and remand to the district court for further proceedings consistent with this opinion.

Pursuant to its labor-management contract, several employees filed grievances against the defendant company. Although many of the grievances were justified and compensation was awarded by the grievance committee, defendant failed to pay. This action was filed seeking to enforce the committee's decision and recover damages. Prior to trial, defendant sought an adjudication of law points concerning the proper procedures for filing a grievance. The court, per Judge Strickler, found that the employee had to file a grievance within the thirty-day time limit required by the agreement after every pay period in which an alleged violation occurred, rejecting the plaintiff's claim that any ongoing violation could be considered for compensation in its entirety if a grievance was filed initially. Plaintiff's application for interlocutory review of this ruling was denied by supreme court order dated July 31, 1986, in docket No. 86-167.

The case then proceeded to trial. The trial court awarded employee Lovejoy \$2,017.07, employee Stewart \$600, and employee Lawler \$0, rejecting plaintiff's argument to reject the previously determined adjudication of law points. Plaintiff now contends on appeal that the district court's adjudication of law points was in error and that this improperly reduced Stewart's and Lawler's damage claims.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

I. Plaintiff's first contention is that the trial court erred in its ruling on defendant's application for adjudication of law points. At issue is the inter-

pretation of the grievance rider to the union contract which states in part:

[A]ny claim by a driver . . . must be presented in writing to the Company . . . within thirty days from the end of the pay period in which the alleged claim arose. Failure to submit a claim within said thirty (30) days shall automatically bar any such claim

Plaintiff argues that the rider does not require continual grievance filing for ongoing violations and that this interpretation has been followed by individuals familiar with grievance procedure. Defendant rejects this determination and argues that plaintiff failed to preserve error on this point since he did not appeal Judge Strickler's order, but instead appealed only Judge Needles' failure to overrule the prior finding. Since Iowa Rule of Civil Procedure 105 prevented Judge Needles from overturning this ruling, defendant suggests that the appeal should be denied since the notice of appeal only refers to this alleged failure to overrule the prior order. Plaintiff retorts that the appeal was properly made and that the underlying issue concerning the interpretation of the rider was preserved.

On December 5, 1985, defendant filed its application for adjudication of law points. Plaintiff resisted on December 16, 1985. Judge Strickler entered his order on December 31, 1985. On January 29, 1986, plaintiff filed its notice of appeal from Judge Strickler's ruling. On July 31, 1986, the supreme court treated the appeal notice as an application for interlocutory appeal and found that the decision from which the appeal was taken was not a final one; the appeal was ordered dismissed without prejudice to any appeal taken after entry of final judgment. Trial was then held; Judge Needles sustained the previous adjudication of law points and plaintiff made an offer of proof at trial on the issue. Judgment was rendered. Plaintiff's notice of appeal specifies that plaintiff is appealing the district court's "refusal to overrule a previous adjudication of law points and incorporation of said ruling as part his final decision." Based

on the foregoing facts, we find that plaintiff has preserved for appeal error in the pretrial order; thus, we retain jurisdiction.

II. We next address whether Judge Needles erred in refusing to reverse the previously adjudicated law point. The trial court, Judge Needles, stated in its judgment:

Rule of Civil Procedure 105 provides in part that upon application of either party the Court must adjudicate law points and "It shall enter an appropriate final order before trial of the remaining issues, adjudicating the point so determined, which shall not be questioned on the trial of any part of the case of which it does not dispose" This trial court declines to overrule the previous adjudication of law points

Defendant argues since plaintiff waited until the middle of trial to move for a reconsideration of the adjudicated law point, that pursuant to Iowa Rule of Civil Procedure 105, once trial commences, the trial court is unable to take further action on the matter. Defendant submits that plaintiff should have asked for reconsideration prior to trial. For those reasons set out in section I of this opinion, specifically the supreme court's ruling that the appeal on the adjudication of law points be dismissed without prejudice to any appeal taken after entry of final judgment, we find the matter was properly preserved for appeal even though the issue was raised at trial, as opposed to prior to trial.

We next address the merits of the issue posed, i.e., whether Judge Strickler's interpretation of the contract provision was correct in holding that a separate grievance form be filed at the end of each pay period even though the occurrence that led to the grievance occurred during an earlier period of time. (The grievance involved concerns an employee laid off with a man of lesser seniority allowed to work and who continued to work for many months without the man with more seniority being called back to work.) Thus, the trial court limited plaintiff's recovery to the amount of damages in a respective pay period's worth of wages for any single written grievance filed.

Plaintiff asserts that the task to interpret a provision of the collective bargaining agreement is normally the responsibility of the grievance committee and not the court. Plaintiff additionally claims the issue posited involves an unresolved factual issue as borne out by an affidavit submitted by plaintiff, as well as plaintiff's resistance to the application for adjudication of law points. Plaintiff refers us to National Farmers Union Property and Cas. Co. v. Nelson, 260 Iowa 163, 168, 147 N.W.2d 839, 843 (1967), which held in ruling on an adjudication of law points that only uncontroverted issues which present points of law may be determined and unresolved factual issues prevent any judgment or determination of the whole case in such a hearing.

The contract language in question states that "any claim . . . must be presented . . . within 30 days from the end of the pay period in which the alleged claim arose." We are in agreement with plaintiff that the point of law which Judge Strickler ruled upon should have been raised at the grievance board hearing and that the trial court is usurping the power and authority of the grievance board by interpreting the collective bargaining agreement.

Plaintiff submitted an affidavit to Judge Strickler from the International Trustee in charge of the affairs at Teamsters Local Union No. 147 who has forty-four years of experience in dealing with collective bargaining agreements. (Judge Strickler declined to hold an evidentiary hearing on the matter of the adjudication of law points.) It was the trustee's opinion that it was the practice of the industry in similar contracts that only one grievance be filed within thirty days of the occurrence of the incident; that there was no need to refile on the same incident after each payroll period in order for the grievance to be timely and for the liability to continue against the employer. In addition, at trial in connection with an offer of proof plaintiff adduced evidence from a business agent working for Local 147 for twenty-two years who testified that it was

not necessary to refile a grievance on a periodic basis for a grievance that is filed but not resolved for a number of months or for a grievance of an ongoing nature, such as where an employee is laid off under a "seniority violation."

It is the function of an arbitrator, not the court, to resolve the merits of a dispute. See, e.g., Sergeant Bluff-Luton Ed. Assoc. v. Sergeant Bluff-Luton Comm. School District, 282 N.W.2d 144, 147, 149 (Iowa 1979). Arbitration draws on the expertise of persons in the field. Id. at 147. Procedural and substantive issues growing out of an arbitrable dispute should be left to the arbitrator. City of Des Moines v. Central Iowa Public Employees Council, 369 N.W.2d 442, 445 (Iowa 1985). We reverse the district court's decision as it relates to the adjudication of law points and remand the case to district court with directions to further remand the issue of the interpretation of the contract provision in question to the grievance committee.

III. Plaintiff asserts the trial court erred in limiting the claim for employee Stewart to \$600 by misinterpreting the law. The damages recoverable by Stewart were limited by Judge Strickler's decision on the adjudication of law points. Because we find the trial court misapplied the law, we remand this case to the trial court for entry of the appropriate amount of damages following the determination on the issue of the contract provision interpretation. Should plaintiff's interpretation prevail, the amount of damages shall be as previously stipulated by the parties.

IV. Plaintiff lastly contends the trial court erred in dismissing the claim of employee Lawler for insufficient evidence. The trial court's finding will not be disturbed on appeal if it is supported by substantial evidence and justified as a matter of law. Harper v. Cedar Rapids Television Co., 244 N.W.2d 782, 787 (Iowa 1976). Witness Pike testified about Lawler's grievance and how it was similar to Stewart's in that Lawler's grievance asked for compensation

while Lawler was laid off and a person with less seniority was working. He additionally testified the grievance would be good from the date it was filed until any committee decision was implemented. In addition, the parties stipulated to the amount of Lawler's damages to satisfy his claim in the event plaintiff prevailed on the adjudication of law points. Based on these facts, we reverse the trial court and find there was sufficient evidence to support a claim for employee Lawler.

Accordingly, we reverse and remand to the district court to carry out those provisions consistent with this decision.

REVERSED AND REMANDED.