

May 2, 2014

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Letter Decision and Order

Gregory J. Erlandson
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RE: HF No. 108, 2013/14 – Jordan Baker v. Rapid City Professional Hockey, LLC,
dba Rapid City Rush and Ace American Insurance Co.

Dear Mr. Siegel and Mr. Erlandson:

Submissions:

This letter addresses the following submissions by the parties:

February 28, 2014	Rapid City Professional Hockey, LLC's Motion to Dismiss;
April 2, 2014	Claimant's Brief in Opposition to Motion to Dismiss for Lack of Jurisdiction Filed by Employer and Insurer; and
April 17, 2014	Rapid City Professional Hockey, LLC's Reply to Claimant's Opposition to Dismiss for Lack of Jurisdiction.

Facts:

The facts of this case, as reflected by the submissions are as follows:

At all times relevant in this case, Jordan Baker (Baker) was employed as a hockey player for Rapid City Professional Hockey, LLC, also known as the Rapid City Rush (the Rush), a professional ice hockey team in the Central Hockey League. Baker played the position of forward for the Rush.

The Rush is an employer within the meaning of SDCL Title 62. It's insurer for purposes of workers' compensation is Ace American Insurance Co. (Insurer).

On or about December 31, 2012, Baker alleges that he suffered an injury arising out of and in the course of his employment when he injured his groin and right hip while playing for the Rush in a game against the Denver Cutthroats.

As a result of this injury, Baker incurred expenses for medical, rehabilitation and other care and will continue to incur medical expenses in the future. Specifically, Baker required a right hip arthroscopy with treatment of his impingement and a repair of the tear with a PRP injection into the abductor.

The Rush and Insurer have refused to pay for the surgery and other benefits.

At the time of Baker's employment, he and the Rush entered into a contract called a Standard Player Agreement (SPA).

The SPA provides, in part, the following:

PLAYER and TEAM agree to be bound for the term of this Agreement to the CHL's Lex Scripta, and any applicable Collective Bargaining Agreement covering CH L players ("CBA"), the terms of which are specifically incorporated herein by reference.... To the extent there may be conflicts between this Agreement, the Lex Scripta, and/ or the CBA, the hierarchy of control is: CBA first, this Agreement next, followed by the Lex Scripta.

If PLAYER is injured in the performance of his services under this Agreement and promptly reports such injury to the TEAM's physician or trainer, then: (a) PLAYER will receive such medical and hospital care during the term of this Agreement as the TEAM's physician may deem necessary and (b) PLAYER will continue to receive his weekly salary for the season of injury only and for no subsequent period covered by this Agreement. ...

Any dispute arising out of, or relating to, this Agreement or any breach hereof, will first be submitted to final and binding arbitration in accordance with the terms of the CBA. The results of such arbitration proceedings shall be binding upon the parties hereto, and judgment may be entered upon the arbitration award in any court having jurisdiction thereof.

The CBA states in part:

ARTICLE XXI- WORKERS' COMPENSATION

Section 1: Worker's Compensation As Required by Law

Benefits: In any state where the workers' compensation coverage is not compulsory or where a Club is excluded from a state's workers' compensation

coverage, a Club will either voluntarily obtain coverage under the compensation laws of that state or otherwise guarantee equivalent benefits to its Players. In the event that a player qualifies for the benefits under this section, such benefits will be equivalent to those benefits paid under the compensation laws of the state in which the Club is located.

Section 3: Salary During Period of Injury

All payments made under a Player's CHL SPA are in consideration of all duties and obligations contained in such SPA. Subject to other provisions of this CBA, if the Club physician determines that a Player is unfit to play professional hockey due to an injury sustained during the course of his employment as a Player of such Club, the Club shall continue to pay the Player the compensation set forth in Paragraph 1 of his SPA, less any workers' compensation benefits, if any, awarded to the Player solely for lost wages for the period the Player is under contract with the Club, and not beyond. Payments made during a period of injury are wages and not an advance payment of workers' compensation, namely temporary, total, and/ or permanent partial impairment benefits.

ARTICLE XIX-FINAL AND BINDING

Any Player dispute, controversy, claim or disagreement (1) arising out of or relating to the meaning of [the CBA], and/ or (2) arising out of or relating to the Standard Player Agreement ... or any alleged breach thereof, shall be submitted to final and binding arbitration pursuant to the procedures set forth herein.

Motion to Dismiss:

The Rush and Insurer argue that the Department does not have jurisdiction in this case because Baker is contractually bound to submit this matter to binding arbitration. The South Dakota Supreme Court discuss the jurisdiction of state agencies in Knapp v. Hamm & Phillips Serv. Co., 2012 S.D. 82, ¶ 12, 824 N.W.2d. 785. There the Court stated:

An administrative agency has jurisdiction over a matter when the agency is given power “by law to hear and decide controversies.” Martin, 2011 S.D. 57, ¶ 10, 804 N.W.2d at 67 (quoting 2 Am. Jur. 2d, Administrative Law § 274 (1994)). Jurisdiction in administrative law differs from jurisdiction in a traditional court setting. It has three components:

[824 N.W.2d 789]

(1) personal jurisdiction, referring to the agency's authority over the parties and interveners involved in the proceedings; (2) subject matter jurisdiction, referring to the agency's power to hear and determine the causes of a general class of cases to which a particular case belongs; and (3) the agency's scope of authority under statute.

Id., ¶ 10, 804 N.W.2d at 67-68 (quoting O'Toole, 2002 S.D. 77, ¶ 10, 648 N.W.2d at 345, and 2 Am. Jur. 2d, Administrative Law § 274 (1994)).

Id. at ¶ 12.

In this case, the Department has personal jurisdiction over the parties. The Rush is required to have workers' compensation coverage in South Dakota pursuant to the terms of the CBA. The Rush and Insurer are conducting business in South Dakota and Baker voluntarily subjected himself to the jurisdiction of this State when he filed his Petition for Hearing with the Department.

There is also no question that the Department has subject matter jurisdiction in the general class of workers' compensation case. The number of Supreme Court decisions in which it reviews workers' compensation cases originating with the Department are too numerous to cite here. Voeller v. Hsbc Card Servs., 2013 S.D. 50 is but one example.

The question in this case deals with the third component of administrative jurisdiction, namely, the Department's scope of authority under statute. Here the Rush and Insurer essentially argue that the Department's authority to hear this case is severed by the parties contractual obligations to submit the controversy to binding arbitration which is authorized by SDCL 21-25A-1.

SDCL Title 62 provides the statutory structure of South Dakota's workers' compensation system. SDCL 62-7-12 states:

If the employer and injured employee or the employee's representative or dependents fail to reach an agreement in regard to compensation under this title, either party may notify the Department of Labor and Regulation and request a hearing according to rules promulgated pursuant to chapter 1-26 by the secretary of labor and regulation. The department shall fix a time and place for the hearing and shall notify the parties.

SDCL 62-7-12.

SDCL 62-3-2 further provides:

The rights and remedies granted to an employee subject to this title, on account of personal injury or death arising out of and in the course of employment, shall exclude all other rights and remedies of the employee, the employee's personal representatives, dependents, or next of kin, on account of such injury or death against the employer or any employee, partner, officer, or director of the employer, except rights and remedies arising from intentional tort.

SDCL 62-3-2.

SDCL 62-7-12 provides a remedy for Baker in this case and SDCL 62-3-2 dictates that the remedy provided by SDCL 62-7-12 is the only one available to him. In effect, SDCL 62-3-2 preclude Baker from seeking a remedy via arbitration. These statutes make clear that Baker appropriately filed a Petition for Hearing with the Department in this case and that Department has jurisdiction to hear the case.

In large part, the Rush and Insurer rely on SDCL 21-25A-1 to support their position. Their reliance on this statute is misplaced. SDCL 21-25A-1 provides:

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives.

SDCL 21-25A-1 (emphasis added). In other words, this provision enforces binding arbitration contracts unless, as in this case, the arbitration is contrary to law.

The binding arbitration clause entered into by Baker and the Rush, may be enforceable with regards to controversies unrelated to workers' compensation claims despite the fact that is unenforceable with regard to workers' compensation disputes. The South Dakota Supreme Court has stated:

Under South Dakota law, certain contracts are divisible: "Where a contract has several distinct objects, one or more of which are lawful and one or more of which are unlawful in whole or in part, the contract is void as to the latter and valid as to the rest." SDCL 53-5-4.

Thunderstik Lodge, Inc. v. Reuer, 2000 S.D. 84, ¶ 7, 613 N.W.2d 44.

Order:

The Department has jurisdiction in the matter. The Rush and Insurer's Motion to Dismiss is denied. This letter shall constitute the order in this matter.

Sincerely,

/s/ Donald W. Hageman
Donald W. Hageman
Administrative Law Judge