Employee Arbitration Agreement Insights From Rhode Island

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A Rhode Island federal district court has ruled in an employer's favor in a recent decision concerning an employee arbitration agreement, an intriguing split from a decision months earlier by a separate session of the court. More specifically, in Britto v. St. Joseph Health Services of Rhode Island[1], the court granted the employer's motion to dismiss proceedings and compel arbitration despite a very recent and similar case, Conduragis v. Prospect CharterCare[2], having gone the other way. The diverging decisions offer some important lessons for employers trying to use arbitration agreements as a tool to lower their costs of resolving employee disputes.

In Britto, the defendants transmitted the arbitration agreement in question to a current employee of a company that the defendants were purchasing. The agreement was given as part of a package which included an offer letter that reserved the right to the employer to "change the terms" of the employee-plaintiff's employment "at any time." This sort of language can put the enforceability of an agreement in doubt because it arguably renders the employer's part of the bargain "without consideration" (i.e., an empty promise that cannot legally support a contract).

As in Conduragis, the arbitration contract in Britto was paginated together with the offer letter (the offer letter started on page one and the arbitration agreement was on page four) and did not have an integration clause. However, unlike in Conduragis, there was no evidence in Britto that the two documents were actually signed at the same time. As such, the Britto court held that the "reservation of rights" language in the offer letter did not render the arbitration agreement unenforceable. In doing so, the court relied on the fact that the arbitration agreement was a standalone document that had to be signed separately and represented a mutual promise to arbitrate employment-related claims by employer and employee that was distinct from the terms of the offer letter and the reservation of rights clause. Since the arbitration agreement was not embedded within the offer letter, the Britto court reasoned, it was distinguishable from arbitration agreements held unenforceable in other cases because those illusory arbitration contracts were part of employee handbooks that contained the problematic "reservation of rights" language.

Even assuming the offer letter and the arbitration agreement were read as the same contract however, the Britto court explained that the arbitration agreement would still be enforceable. The "reservation of rights" language would not invalidate the arbitration agreement because it was supported by "independent valid consideration" in the form of the employee-plaintiff's continued employment. The Rhode Island Supreme Court had held in 1981 that continued employment was sufficient consideration to support a contract, and other federal and Rhode Island courts had held similarly. This was sufficient for the court in Britto to conclude that the arbitration agreement before it was enforceable.

Conversely, in Conduragis, a different judge relied on the cases that the Britto court distinguished to hold on almost identical facts that an arbitration agreement was part of the offer letter and subject to the "reservation of rights" provision. The arbitration agreement, the court held, was therefore illusory and unenforceable. Other than the timing of the execution of the documents, the only other significant factual distinction between Conduragis and Britto was that the arbitration agreement in Conduragis appeared to be accessible only by following a hyperlink in the offer letter. The Conduragis court considered such means of transmitting the arbitration agreement important when ruling it a part of the offer letter.

Differing further from Britto, the Conduragis court also held that continued employment was not sufficient consideration to save the arbitration agreement. The court principally relied on the fact that the Rhode Island

Supreme Court had “not squarely decided whether continued employment can be sufficient consideration” for an arbitration contract, as well as authority from the Rhode Island Superior Court, to reach that conclusion. Although acknowledging that other cases held differently, the Conduragis court reasoned that the facts before it counseled otherwise. The employer had basically given the employee-plaintiff nothing in exchange for the arbitration agreement: The employee remained in the same position, with the same rate of pay, benefits and title, and was not even required to reapply for the position. When coupled with the “reservation of rights” language, this was enough to render any “promise of continued employment illusory” and the arbitration agreement unenforceable. The Conduragis defendants have appealed the decision to the First Circuit.

The Britto and Conduragis decisions highlight for employers that small details in the language and presentation of arbitration agreements with employees can mean the difference between an enforceable agreement and an unenforceable one. Employers attempting to create enforceable arbitration agreements with their employees, therefore, would be well-advised to: (1) present arbitration agreements separate from either employee handbooks and offer letters (both of which often reiterate the at-will and unilaterally changeable nature of an employee’s employment by the employer and give courts a hook to invalidate arbitration agreements as illusory); and (2) consider specifically carving out written agreements signed by the employer from the definition of a term or condition of employment that can be changed unilaterally (a suggestion from the Conduragis court at a hearing in that matter).

Notably, neither Britto nor Conduragis touched on whether mandatory arbitration agreements are generally enforceable under the Federal Arbitration Act or illegal under the National Labor Relations Act. Essentially, the NLRA protects the rights of employees to self-organize, bargain collectively, and engage in other “concerted activities” for the employees’ mutual aid and protection. Mandatory arbitration agreements could be viewed as conflicting with this protection, given that such agreements often explicitly or implicitly purport to limit an employee’s ability to bring a class or collective action. This conflict between the FAA and NLRA was before the U.S. Supreme Court in October 2017 in three consolidated cases: NLRBv. Murphy Oil USA, Epic Systems v. Lewis, and Ernst & Young v. Morris. The Supreme Court is expected to rule on these cases in the near future. Thus, employers should strongly consider waiting to issue new arbitration agreements until after the Supreme Court has weighed in. Assuming the Supreme Court approves mandatory arbitration agreements in some fashion, revisions to current employee arbitration agreements (or the drafting of new agreements entirely) to comply with that ruling, as well as implementing the lessons from Britto and Conduragis would be advisable.

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