UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

PROFESSIONAL TRANSPORTATION, INC.,	)	
Plaintiff,	)	
v.	)	3:17-cv-00176-RLY-MPB
UNITED PROFESSIONAL & SERVICE EMPLOYEES UNION LOCAL 1222,	)	
Defendant.	)	
UNITED PROFESSIONAL & SERVICE EMPLOYEES UNION LOCAL 1222,	)	
Counter Claimant,	)	
v.	)	
PROFESSIONAL TRANSPORTATION, INC.,	)	
Counter Defendant.	)	

ENTRY ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Professional Transportation Inc. ("PTI") insists that an arbitrator's award in favor of the United Professional & Services Employees Union Local 1222 ("Union") cannot stand because the arbitrator ignored the plain meaning of the most recent collective bargaining agreement. The court sees it differently. The relevant provision is ambiguous, and so the arbitrator's award "draws it essence" from the agreement. That is enough to satisfy this court's extremely limited review. Accordingly, PTI's Motion for

Summary Judgment is **DENIED** and the Union's Motion for Summary Judgment is **GRANTED**.

I. Background

The material facts in this case are not disputed. PTI transports railroad crews between rail yards and other locations throughout the country. (Filing No. 1, Complaint ¶ 5; Filing No. 14, Answer ¶ 5). PTI maintains hundreds of different branches, employing thousands of different drivers. (*Id.*). The Union represents these drivers—around 4,500 to be more precise. (Filing No. 24-3, Transcript of the Arbitration Hearing at 18). Subject to a few exceptions not relevant here, the Union is the exclusive bargaining agent for these drivers. (Complaint ¶ 6; Answer ¶ 6).

Since 1999, the Union and PTI have entered into several collective bargaining agreements. (Filing No. 24-5, Arbitration Award ("Award") at 6). The one at issue became effective April 1, 2015 and lasted through March 31, 2018. (Filing No. 19-1, Collective Bargaining Agreement ("CBA") at 1. Both parties agreed to be bound by the CBA, and both agreed that any disputes arising under the CBA would be resolved through binding arbitration. (CBA at 7, 34 – 36).

The dispute in this case revolves around the meaning of Article 3, Section 1 of the CBA. (CBA at 9 – 10). That section provides certain minimum wage rates and increase rates for PTI employees. (*Id.*). The rates depend on the seniority of the employee, i.e. the rate for a "Level 2" employee (one who has been with the company between sixty-one days and one year) is lower than the minimum wage rate for a "Level 5" employee (one who has been with the company between five and nine years). (*Id.*). The section

also indicates the rates shown are *minimum rates*. (*Id.*). Because PTI operates throughout the country and rates may vary depending on a number of factors, the parties agreed to only list the minimum rates in the CBA. (*See id.*).

There are two charts listed under Article 3. (*Id.*). The first chart shows the minimum wage rates. (*Id.*). This chart establishes the minimum wage all employees must earn. (*Id.*). The second chart shows the minimum *increase* rates. (*Id.*). This chart provides the annual wage rate increases that were to take effect in 2016 and in 2017. (*Id.*). The entire section is shown below.

A. Effective April 1, 2015, the following minimum wage rates shall prevail:

	Years	Increase	Hourly	Mileage	Wait time	Minimum
Level 1	0 -60 days	1.25%	7.34	.160	7.34	14.68
Level 2	61 days - 1 Year	L1 x 1.25%	7.43	.168	7.43	14.86
Level 3	1 Year - 3 Years	2%	8.21	.175	8.01	16.02
Level 4	3 Years -5 Years	2.50%	8.41	.185	8.05	16.10
Level 5	5 Years -9 Years	2.50%	8.50	.200	8.07	16.14
Level 6	9 Years -12 Years	L5 x 1.015%	8.62	.203	8.19	16.38
Level 7	12 Years and above	L6 x 1.015%	8.75	.206	8.31	16.62

	Years	2016 Increase	2017 Increase
Level 1	0 -60 days		
Level 2	61 days – 1 Year	0.50%	0.50%
Level 3	1 Year – 3 Years	2%	2.50%
Level 4	3 Years – 5 Years	3%	3%
Level 5	5 Years – 9 Years	3%	3.35%
Level 6	9 Years -12 Years	L5 x 1.015%	L5 x 1.015%
Level 7	12 Years and above	L6 x 1.015%	L6 x 1.015%

Legacy Level 6 rates will be integrated into the wage scale per mutual agreement

a. The above rates are minimum rates across all PTI Branch locations. Rates are Branch specific and depend on a number of factors including, state law, area, trip configuration, PTI's ability to recruit. Rates may be more or less in each category than another Branch, subject to minimum rates.

(*Id.*). Since the parties began negotiating collective bargaining agreements, the annual wage rate increases have applied to *all employees*. (Award at 6).

Things changed in 2016. (Complaint ¶ 23; Answer ¶ 23). PTI awarded wage increases only to those employees who were being paid the national minimum wage. (*Id.*). PTI did not award wage increases to employees who were making more than the national minimum wage rates. (*Id.*). The effects of the decision were significant: 70% of the entire bargaining unit did not receive a wage increase for the first time since 1999. (Award at 6).

None too pleased with PTI's decision, the Union filed a grievance under the CBA. (Complaint ¶ 24; Answer ¶ 24). The parties agreed to submit the grievance to arbitration, and ultimately, on October 3, 2017, the arbitrator found for the Union. (Award at 14). He ordered PTI to grant the wage increase for all Level 2 through Level 7 employees for 2016. (*Id.*). PTI then filed the present action seeking to vacate the award.

II. Legal Standard

"Judicial review of arbitration awards is extremely limited." *United States Soccer Federation, Inc. v. United States National Soccer Team Players Assoc.*, 838 F.3d 826, 831 (7th Cir. 2016) (quotations and citation omitted); *see also United Paperworkers Intern. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 36 (1987). So long as the award "draws its essence" from the collective bargaining agreement, the court will uphold the arbitrator's decision. *United Paperworkers*, 484 U.S at 36 (citation omitted); *see also Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001) (per curiam) ("Courts are not authorized to review the arbitrator's decision on the merits despite

allegations that the decision rests on factual errors or misinterprets the parties' agreement.") (citation omitted); *U.S. Soccer*, 838 F.3d at 831 – 32. An award "draws its essence" from a collective bargaining agreement when the award is based on the arbitrator's interpretation of the agreement itself. *United Food and Commercial Workers, Local 1546 v. Illinois American Water Co.*, 569 F.3d 750, 754 (7th Cir. 2009) (citations omitted).

However, arbitrators cannot resolve grievances willy-nilly. *See United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) ("[Arbitrators do] not sit to dispense [their] own brand of industrial justice."); *Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc.*, 935 F.2d 1501, 1505 (7th Cir. 1991) ("The arbitrator is not free to think or to say, 'The contract says X, but my view of sound policy leads me to decree Y.'") (citation omitted); *Ethyl Corp. v. United Steelworkers of America, AFL-CIO-CLC*, 768 F.2d 180, 187 (7th Cir. 1985) ("This is not to say that simply by making the right noises—noises of contract interpretation—an arbitrator can shield from judicial correction an outlandish disposition of a grievance."). Courts must vacate arbitration awards that are solely based on thoughts, feelings, policies, or laws outside the agreement. *Northern Indiana Public Service Co. v. United Steelworkers of America AFL-CIO-CLC*, 243 F.3d 345, 347 (7th Cir. 2001) (internal quotations and citations omitted). Courts can also vacate awards where the arbitrator ignores the clear language of the agreement. *See e.g. U.S. Soccer*, 838 F.3d at 837.

III. Discussion

PTI argues that the award must be vacated because the arbitrator improperly relied on past practice and ignored the clear and unambiguous terms of the CBA requiring PTI to provide wage increases only to those employees making the national minimum wage. *E.g. U.S. Soccer*, 838 F.3d at 837 (vacating arbitration award where arbitrator relied on past practice and ignored the terms of the agreement).

The problem though is that the CBA does not say what PTI wants it to say. Nowhere does it say the minimum increase rates apply *only* to those employees making the minimum wage. For that conclusion, PTI points to the fact that the minimum increase rates are located directly below the minimum wage rates. But that is far from a clear and "unequivocal" indication that the minimum increases apply only to those making the minimum wage. (Filing No. 20, PTI's Brief in Support at 17). It is just as likely that those charts are located together because they both establish *minimum rates* applicable to *all employees*: the minimum wage chart establishes the minimum wages that *all* employees must earn, and the minimum increase chart establishes the minimum increases that *all* employees must earn. This inference is strengthened by the sub-paragraph which provides that "[t]he above rates are minimum rates *across all PTI Branch locations* . . . ." (CBA at 9) (emphasis added). The court need not definitively determine what the section means; it is simply enough to say that the section is ambiguous as *to whom the minimum increases apply*. *Cf. U.S. Soccer*, 838 F.3d at 837

(vacating arbitration award where language of the CBA *directly contradicted* the arbitrator's determination that the CBA was silent as to the dispositive issue).[1]

Because the CBA is ambiguous, the arbitrator did not err by considering past conduct and other extrinsic evidence to conclude that PTI must award pay increases to all employees. *See Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 608 (7th Cir. 1993) (en banc) (extrinsic evidence is appropriate when the collective bargaining agreement is ambiguous). That was a possible interpretive route, and so the arbitrator's award must stand. *Dexter Axle Co. v. International Assoc. of Machinists & Aerospace Workers, Dist. 90, Lodge 1315*, 418 F.3d 762, 768 (7th Cir. 2005) (noting a court can only vacate an award where there is no possible interpretive route to the award) (quotations and citation omitted).

PTI argues that the arbitrator never actually engaged in contract interpretation and instead "dispense[d] his own brand of industrial justice" by simply granting the Union an award based on his policy desires. *U.S. Soccer*, 838 F.3d at 832 (internal quotations and citation omitted). True, the arbitrator relied on evidence outside the contract and included policy reasons for his rationale. (*E.g.* Award at 11 ("Your mother, or a teacher, or some other respected person in your life, may have told you we are judged not by our words but by our actions.")). Not to mention his use of colorful analogies. (*E.g. id.* at

[1] PTI also makes a passing reference to Section 1(C) to support its interpretation. (PTI's Brief in Support at 8). But courts do not consider underdeveloped arguments, especially those buried in the statement of facts. *See Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012); *see also Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (party abandons issue when it only makes passing references to the issue in the statement of the case).

10) (discrediting PTI's witness because "he was not involved in the negotiations, in person or, like the Wizard of Oz, even behind the curtain."). But the opinion—in its entirety—shows that the arbitrator was interpreting the CBA and only went beyond the agreement to resolve the parties' competing interpretations of the CBA. (*Id.* at 2 – 3, 5 (discussing contractual provisions); *id.* at 7 (explaining his role is to determine the intent of the parties); *id.* at 8 (explaining the contract only provides the minimum wage rates yet PTI indisputably pays certain employees more than the minimum). It may have been helpful to explicitly declare the CBA ambiguous before considering extrinsic evidence, but his failure to use that term does not render the award invalid. *See Akers Nat'l Roll Co. v. United Steel, Paper and Forestry, Rubber, Mf'g, Energy, Allied Indus. and Serv. Workers Int'l Union*, 712 F.3d 155, 162 (3d Cir. 2013) ("It might have been preferable for the Arbitrator to state explicitly that [the CBA] was ambiguous, therefore permitting him to address the past practice issue. His failure to do so does not by itself, however, require that the award be vacated."). After all, this court is not to hand out letter grades—just simply a pass or a fail. *See Dexter Axle Co.*, 418 F.3d at 768 (any doubt about whether an award draws its essence from the CBA is resolved in favor of enforcing the award). And when considered as a whole, the opinion demonstrates the arbitrator engaged in contract interpretation. *Ethyl Corp.*, 768 F.2d at 187 (noting a court's job ends once it concludes the arbitrator interpreted the contract).

Accordingly, PTI's Motion for Summary Judgment (Filing No. 19) is **DENIED**. The Union's Motion for Summary Judgment (Filing No. 23) is **GRANTED**. The arbitration award stands. Final judgment shall enter by separate order.

SO ORDERED this 3rd day of July 2019.

RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

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