

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-10525-RGS

ROBERT JONES
and DARNELL JONES

v.

VERIZON COMMUNICATIONS, INC.

MEMORANDUM AND ORDER ON DEFENDANT'S
MOTION FOR PARTIAL JUDGMENT AS A MATTER OF LAW

October 23, 2009

STEARNS, D.J.

This action was brought by plaintiffs Robert and Darnell Jones following their termination from employment by defendant Verizon Communications, Inc. (Verizon). Plaintiffs allege claims for age, gender, race, and disability discrimination, association discrimination, failure to reasonably accommodate, retaliation for engaging in protected activities and by association, interference with protected rights, aiding and abetting others in discriminatory acts, and wrongful termination. Because Darnell Jones's termination was the subject of a prior arbitration, Verizon filed this motion seeking a declaratory judgment that the arbitrators' findings of fact are now binding. A hearing was held on October 19, 2009.

BACKGROUND

Plaintiff Darnell Jones was employed by Verizon for sixteen years, most of that time as a splice service technician. On February 9, 2006, Darnell was injured at work when she slipped on a patch of ice and fell onto her back and hand. She applied for and received

disability and workers' compensation. Sometime thereafter, Verizon initiated an investigation into whether Darnell was exaggerating or feigning her injuries.¹ Darnell was videotaped by investigators working at a restaurant she owned during a time when she claimed that she was incapable of working. As a result, Verizon terminated Darnell for violating its employee code of conduct. Darnell's union challenged her termination in an arbitration conducted pursuant to its collective bargaining agreement with Verizon. The arbitration panel concluded that "while the evidence supports Ms. Jones' claim that she was dealing with back pain between February 17, 2006 and April 10, 2006, the evidence also establishes that she misrepresented the degree to which this condition affected her work capacity for this period." Arbitration Award at 18. The panel further stated that "[w]here the evidence established convincingly that Ms. Jones had misrepresented the degree of her work capacity, the Company was justified in terminating her employment." Id. at 23.

DISCUSSION

Verizon seeks a declaration that the facts found by the arbitration panel in issuing its award are conclusively binding in the present litigation. The doctrine of collateral estoppel, or issue preclusion, prevents relitigation of an issue where a four-pronged test is met: "(1) the issue sought to be precluded must be the same as that involved in the prior action; (2) the issue must have been actually litigated; (3) the issue must have been determined by a valid and binding final judgment; and (4) the determination of the issue

¹Verizon acted on complaints from coworkers regarding suspicions of past malingering on Darnell's part.

must have been essential to the judgment.” Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, 30 (1st Cir. 1994). “In addition, it is well-settled that issue preclusion may apply to arbitration proceedings.” O’Connell v. Fed. Ins. Co., 484 F. Supp. 2d 223, 226 (D. Mass. 2007). “[T]he prior submission of a claim to arbitration may result in . . . issue preclusion in a judicial proceeding if ‘arbitration affords the opportunity for presentation of evidence and argument substantially similar in form and scope to judicial proceedings.’” LaRosa v. United Parcel Service, 23 F. Supp. 2d 136, 150 (D. Mass. 1998), quoting Miles v. Aetna Casualty and Surety Co., 412 Mass. 424, 427 (1992). Here, Verizon seeks to use collateral estoppel defensively. “The guiding principle in determining whether to allow defensive use of collateral estoppel is whether the party against whom it is asserted lacked full and fair opportunity to litigate the issue in the first action.” In re Sonus Networks, Inc. Shareholder Deriv. Litig., 422 F. Supp. 2d 281, 288 (D. Mass. 2006) (citations omitted).

As for the first and second prongs, the parties disagree on whether the issues presented in this action are the same and were therefore “actually litigated” in the arbitration proceeding. Verizon frames the issue as whether Darnell “cheated” the company and gave it “just cause” to terminate her. See Defendant’s Memorandum of Law at 7. Darnell insists that she is not seeking to relitigate the issue of cause for her termination, but whether that cause was pretextual and that her termination was in fact motivated by race and gender discrimination and a desire to retaliate.

Under the Supreme Court’s holding in Alexander v. Gardner-Denver Co., 415 U.S. 36, 60 (1974), an “arbitral decision may be admitted as evidence and accorded such weight as the [district] court deems appropriate.” Verizon argues that the holding of

Gardner-Denver is superseded by the Court's more recent decision in 14 Penn Plaza, LLC v. Pyett, 129 S. Ct. 1456 (2009). Penn Plaza, according to Verizon, requires that the Arbitration Award be given preclusive weight in this litigation. While the Penn Plaza majority criticized Gardner-Denver in dicta, as reflecting a "timeworn" judicial mistrust of the arbitral process, it explicitly stated that its decision did "not contradict the holding of Gardner-Denver." 129 S. Ct. at 1469 n.8.² As Verizon frankly concedes, if Gardner-Denver is good law, "Verizon's Motion would be denied." Defendant's Reply to Opposition at 1. Because this court believes that Gardner-Denver in its relevant aspects does remain good law, the motion for partial judgment will be denied.³

ORDER

For the foregoing reasons, Verizon's motion for partial judgment as a matter of law is DENIED.

SO ORDERED

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

²What distinguishes the two cases is the language of the collective bargaining agreements at issue. The agreement in Penn Plaza explicitly committed employment-related discrimination claims to arbitration while the agreement in Gardner-Denver provided only for the arbitration of contractual (as opposed to statutory) claims. Penn Plaza, 129 S. Ct. at 1468-1469.

³The manner, scope, and effect of the presentation of the arbitrators' decision to the jury is premature and best addressed by way of a pretrial motion in limine.