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## 2002 Survey of Rhode Island Law: Cases: Arbitration

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**Arbitration.** *Bradford Dyeing Ass'n v. J. Stog Tec GMBH*, 809 A.2d 468 (R.I. 2002). An arbitration award, which has been appealed, is not a final judgment. Therefore, postjudgment interest may not accrue until any appeal is completed.

#### FACTS AND TRAVEL

In 1993, the plaintiff and defendant entered into an agreement, which the plaintiff unilaterally terminated.<sup>1</sup> Under the terms of the agreement, the case was sent to an arbitrator who ruled in favor of the defendant on June 26, 1998.<sup>2</sup> The arbitrator's award included \$339,300 in interest.<sup>3</sup> On September 15, 1998, the arbitrator added \$162,000 in attorney's fees to this award.<sup>4</sup> The plaintiff filed an action in August 1998 seeking to vacate the award and the defendant filed a motion in September 1998 to confirm it.<sup>5</sup> After appeal, on April 3, 2001, the superior court entered judgment in favor of the defendant in the amount of \$1,188,091.74, plus 12% interest from June 26, 1998, the date of the arbitration award.<sup>6</sup>

The plaintiff responded by filing a motion for relief from judgment under rule 60(b) of the Rhode Island Superior Court Rules of Civil Procedure.<sup>7</sup> The plaintiff argued "that interest should not have been compounded on the prejudgment interest already assessed by the arbitrator."<sup>8</sup> The defendant argued this was postjudgment interest since the arbitration award was a judgment.<sup>9</sup> On April 18, 2001, the motion justice ruled in favor of the plaintiff in holding that an arbitration award on appeal is not an entry of judgment for purposes of a statutory interest assessment.<sup>10</sup>

On April 30, 2001, the motion justice published the amended final judgment, which included the following modifications: the plaintiff should pay the defendant prejudgment interest on the principal of the arbitrator's award for the time period of June 26,

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1. *Bradford Dyeing Ass'n v. J. Stog Tec GMBH*, 809 A.2d 468, 469 (R.I. 2002).
  2. *Id.*
  3. *Id.*
  4. *Id.*
  5. *Id.*
  6. *Id.*
  7. *Id.* (citing R.I. SUPER. CT. R. CIV. P. 60(b)).
  8. *Id.*
  9. *Id.* at 469-70.
  10. *Id.* at 470.

1998 to April 3, 2001; the plaintiff shall pay prejudgment interest on the award of attorney's fees for the time period of September 15, 1998 to April 3, 2001; and that the plaintiff shall pay postjudgment interest from April 3, 2001, until the award is paid at the statutory rate of 12% on the total amount of the judgment.<sup>11</sup> Defendant appealed.<sup>12</sup>

#### BACKGROUND

Section 9-21-10(a) of the Rhode Island General Laws states that "Postjudgment interest shall be calculated at the rate of twelve percent (12%) per annum and accrue on both the principal amount of the judgment and the prejudgment interest entered therein. This section shall not apply until entry of judgment . . . ."<sup>13</sup>

#### ANALYSIS AND HOLDING

The judgment referred to in section 9-21-10(a) is a final judgment "that finally adjudicates the rights of the parties."<sup>14</sup> Only after the entrance of such a final judgment can postjudgment interest accrue.<sup>15</sup> A final judgment "occurs when the [trial] court enters judgment, if the debtor has not filed a timely notice of appeal or when [the supreme court] affirms the judgment on appeal, whatever event first occurs."<sup>16</sup> In calculating interest, the court may not compound prejudgment interest on the prejudgment interest awarded by the arbitrator.<sup>17</sup>

#### CONCLUSION

The Rhode Island Supreme Court held when a party appeals an arbitration award, postjudgment interest begins to accrue only on the affirmation of the judgment on appeal. The court reasoned a final judgment only occurs upon either the entry of an unap-

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11. *Id.*

12. *Id.*

13. R.I. GEN. LAWS § 9-21-10(a) (1997).

14. *Bradford*, 809 A.2d at 471 (quoting *Welsh Mfg., Div. of Textron, Inc. v. Pinkerton, Inc.*, 494 A.2d 897, 898 (R.I. 1985)).

15. *Id.*

16. *Id.*

17. *Id.*

pealed final judgment or the affirmation of the judgment on appeal.

Dana John Gravina

**Arbitration.** *Liberty Mutual Insurance Co. v. Tavaréz*, 797 A.2d 480 (R.I. 2002). The court has authority to review an arbitration award when the arbitration takes place pursuant to a court order. In such cases, the court may add prejudgment interest to an arbitration award, as well as costs, even though the arbitration award did not include these sums and their inclusion causes the judgment to exceed the policy limits. Prejudgment interest begins to accrue on the date the insurance company wrongfully denies the claim.

#### FACTS AND TRAVEL

On December 18, 1993, Ronald Steele and Troy Perry, while driving an uninsured vehicle, shot and killed the insured, Bartolo Tavaréz.<sup>1</sup> The plaintiff had issued a motor vehicle insurance policy to the insured.<sup>2</sup> The defendant, the insured's father, submitted a claim to the plaintiff seeking benefits under the uninsured motorist policy, based on his son's death.<sup>3</sup> When the plaintiff rejected the claim, the defendant requested arbitration, which was provided for under the terms of the policy.<sup>4</sup> On July 25, 1996, the plaintiff filed a declaratory judgment action, asking the court to find that the insured was not entitled to payment under the policy.<sup>5</sup> The superior court ruled in favor of the defendant and the plaintiff appealed to the supreme court.<sup>6</sup> Prior to the appeal being docketed, the defendant again requested arbitration.<sup>7</sup> The plaintiff refused, but was ordered, to arbitrate by the superior court.<sup>8</sup> The superior court stayed the execution of any arbitration award until the supreme court had decided the plaintiff's appeal concerning the declaratory judgment.<sup>9</sup> The plaintiff then filed a motion with the supreme court, which was denied, arguing the arbitration was a waste of time and should be stayed.<sup>10</sup>

On December 3, 1999, the arbitration panel awarded \$300,000 to defendant, the maximum amount recoverable under the pol-

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1. *Liberty Mut. Ins. Co. v. Tavaréz*, 797 A.2d 480, 482 (R.I. 2002).
  2. *Id.*
  3. *Id.*
  4. *Id.*
  5. *Id.*
  6. *Id.*
  7. *Id.*
  8. *Id.*
  9. *Id.*
  10. *Id.*

icy.<sup>11</sup> In July 2000, the Rhode Island Supreme Court upheld the superior court's declaratory judgment.<sup>12</sup> The plaintiff then sought to confirm the arbitration award while the defendant sought to have prejudgment interest and costs added to the arbitration award.<sup>13</sup> The superior court awarded \$210,000 in prejudgment interest for the period of December 18, 1993, the date Bartolo Tavarez was killed, to October 29, 1999, the date the arbitration hearing commenced.<sup>14</sup> The superior court also awarded \$45,900 in postjudgment interest on the subtotal of \$510,000, which reflects the initial arbitration award and the prejudgment interest on that award.<sup>15</sup> Lastly, the superior court awarded costs, which included expert witness fees.<sup>16</sup> Plaintiff appealed.<sup>17</sup>

#### BACKGROUND

Section 9-30-8 of the Rhode Island General Laws states, "Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor [sic] shall be by petition to a court having jurisdiction to grant the relief."<sup>18</sup>

Section 9-21-10(a) of the Rhode Island General Laws provides that:

In any civil action in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at a rate of twelve percent (12%) per annum thereon from the date the cause of action accrued, which shall be included on the judgment entered therein.<sup>19</sup>

#### ANALYSIS AND HOLDING

The Rhode Island courts have extremely limited authority in reviewing the merits of an arbitration award.<sup>20</sup> However, the arbi-

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11. *Id.* at 482-83.

12. *Id.* at 483.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 486 (quoting R.I. GEN. LAWS § 9-30-8 (1997)).

19. *Id.* at 487 (quoting R.I. GEN. LAWS § 9-21-10(a) (1997)).

20. *Id.* at 487.

tration in this case did not occur under the arbitration agreement in the policy and hence the superior court's review was not a mere confirmation of an arbitration award.<sup>21</sup> The plaintiff arbitrated the dispute only when ordered to do so, by the superior court, in the declaratory judgment.<sup>22</sup> Pursuant to the declaratory judgment, the superior court retained jurisdiction over the declaratory judgment action and, therefore, had the ability to issue supplementary relief under section 9-30-8.<sup>23</sup> The superior court also "stayed the result of any arbitration pending [the supreme court's] decision on the coverage of the policy, clearly contemplating further court action under the declaratory [ ] judgment suit."<sup>24</sup> The interest awarded by the superior court constitutes further relief in the declaratory judgment action under section 9-30-8.<sup>25</sup>

The supreme court in *Skaling v. Aetna Ins. Co. (Skaling I)*,<sup>26</sup> stated that the intent of the legislature in passing prejudgment interest statutes was to encourage the early settlement of claims.<sup>27</sup> In *Skaling I*, the supreme court "fashioned judicially created remedies designed to compensate insured claimants for the 'stonewalling' and delaying tactics of insurance companies . . ."<sup>28</sup> Under *Skaling v. Aetna Ins. Co. (Skaling II)*,<sup>29</sup> the plaintiff's repeated attempts to avoid providing coverage to the insured in this case was held to be a breach of contract.<sup>30</sup>

The superior court erred in calculating prejudgment interest.<sup>31</sup> Under section 9-21-10(a), the interest clock begins running on the date when the cause of action accrues.<sup>32</sup> The date the cause of action accrued was not the date when Bartolo Tavaréz was killed, but rather, the date when the plaintiff wrongfully denied the claim.<sup>33</sup> Therefore, prejudgment interest should be calculated

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21. *Id.*

22. *Id.*

23. *Id.* at 485.

24. *Id.*

25. *Id.* at 486.

26. 742 A.2d 282, 292 (R.I. 1999).

27. *Tavaréz*, 797 A.2d at 486 (citing *Skaling I*, 742 A.2d at 292).

28. *Id.* at 484 (citing *Skaling I*, 742 A.2d at 292).

29. 799 A.2d 997 (R.I. 2002).

30. *Tavaréz*, 797 A.2d at 486-87 (citing *Skaling II*, 799 A.2d at 1003).

31. *Id.* at 487.

32. *Id.*

33. *Id.*

from May 3, 1996 not December 18, 1993.<sup>34</sup> The superior court also erred in compounding the prejudgment interest by awarding postjudgment interest on the prejudgment interest, and in awarding expert witness fees as costs.<sup>35</sup>

#### CONCLUSION

Because the arbitration occurred pursuant to a court order and not under the terms of the policy, the superior court had authority to review the arbitration award. Therefore, the superior court did not err in adding prejudgment interest and costs to the arbitration award even though the inclusion of these amounts caused the judgment to exceed the policy limits. However, the court did err in the method of calculating these costs. Prejudgment interest begins to accrue when the insurance company wrongfully denies the claim.

Dana John Gravina

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34. *Id.* at 488.

35. *Id.*



**Arbitration.** *School Committee v. Crouch*, 808 A.2d 1074 (R.I. 2002). When a statute provides a specific administrative remedy for employees to invoke when challenging a for-cause termination, but also allows the parties to elect arbitration, the arbitration agreement must be specific about which types of disputes are covered by the agreement otherwise the statute will prevail.

#### FACTS AND TRAVEL

Crouch was terminated as a principal in the Town of North Kingstown school system when he admitted stealing the prescription drug Ritalin from students at the school.<sup>1</sup> Prior to his dismissal, Crouch was employed as a tenured teacher and a school principal in the Town of North Kingstown.<sup>2</sup> Following his dismissal as principal, the school committee also voted to dismiss Crouch as a tenured teacher.<sup>3</sup> Crouch appealed the decision pursuant to section 16-13-4(a) of the Rhode Island General Laws; he also filed a grievance under the arbitration provisions in a collective bargaining agreement (CBA) between the town and the union.<sup>4</sup>

The trial court found that the arbitration provisions in the CBA did not clearly cover grievances arising out of for-cause terminations of tenured teachers; therefore, the court granted a preliminary injunction barring Crouch from proceeding to arbitrate his dismissal.<sup>5</sup>

#### BACKGROUND

Section 16-13-4(a) of the Rhode Island General Laws states, "Any teacher aggrieved by the decision of the school board shall have the right of appeal to the department of elementary and secondary education and shall have the right of further appeal to the superior court."<sup>6</sup>

#### ANALYSIS AND HOLDING

Section 16-13-4(a) allows a tenured teacher the opportunity to appeal a decision of the school board; however, the teacher's statu-

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1. *Sch. Comm. v. Crouch*, 808 A.2d 1074, 1076 (R.I. 2002).
  2. *Id.*
  3. *Id.*
  4. *Id.*
  5. *Id.* at 1077.
  6. *Id.* (citing R.I. GEN. LAWS § 16-13-4(a) (2001)).

tory remedy is not necessarily exclusive.<sup>7</sup> In the present case, the parties also agreed, in the CBA, to arbitrate certain matters.<sup>8</sup> However, the language of the CBA did not state that the parties agreed to arbitrate dismissals of tenured teachers for-cause.<sup>9</sup> Arbitration is a contractual matter; a party cannot be compelled to arbitrate a matter to which the party did not agree.<sup>10</sup> In the instant case, the parties were not clear as to whether dismissals of tenured teachers for-cause were subject to the CBA.<sup>11</sup> In light of the specific statutory remedy provided, the court found that the provisions of the statute should govern the more general provisions of the CBA.<sup>12</sup> The court found support that the CBA was not intended to include for-cause dismissals in a separate contract negotiated by the school committee.<sup>13</sup> The separate contract explicitly allowed arbitration for employees terminated for-cause.<sup>14</sup> The presence of this provision suggested that the parties knew how to include the remedy if that was their intent.<sup>15</sup>

The court also addressed the election-of-remedies doctrine.<sup>16</sup> The court found that by electing to pursue his statutory remedy pursuant to section 16-13-4(a), Crouch waived any right he may have had to pursue arbitration under the CBA.<sup>17</sup> The statutory appeal procedure does not allow a party to simultaneously pursue both the statutory remedy and arbitration.<sup>18</sup>

#### CONCLUSION

When a statute provides a specific appellate procedure for employees to invoke when challenging a for-cause termination, but also allows the parties to elect arbitration, the arbitration agreement needs to be specific about which types of disputes are covered

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7. *Id.*

8. *Id.* at 1075.

9. *Id.* at 1078.

10. *Id.*

11. *Id.*

12. *Id.* at 1079.

13. *Id.*

14. *Id.*

15. *Id.* at 1080.

16. *Id.* The election-of-remedies doctrine allows the plaintiff to choose which available remedy to pursue, but does not allow the pursuit of multiple remedies simultaneously. *Id.*

17. *Id.*

18. *Id.*

by the arbitration agreement. If the arbitration provisions do not contain the specific dispute in question, the statutory remedy will govern the more general provisions of the arbitration agreement. In addition, the election-of-remedies doctrine prohibits a party from simultaneously pursuing both a statutory remedy and arbitration.

Amy Hughes

**Arbitration.** *Purvis Systems Inc. v. American Systems Corp.*, 788 A.2d 1112 (R.I. 2002). The Rhode Island Supreme Court held that a supplemental arbitration award including the payment of attorney's fees by the losing party was valid even though it was added after the original award had been declared.

#### FACTS AND TRAVEL

In 1997, Purvis Systems, Inc. (Purvis) and American Systems Corporation (ASC) entered into a subcontract in which Purvis was the general contractor and ASC was the subcontractor.<sup>1</sup> A dispute arose between the parties at which point Purvis filed a demand for arbitration to determine the rights of the parties.<sup>2</sup> The arbitrator found in favor of ASC and ordered Purvis to pay the fees and expenses of the American Arbitration Association (AAA) as well as the arbitrator in accordance with the parties' contract that provided the losing party would bear "all expenses of the arbitration."<sup>3</sup> No mention of attorney's fees was made in the arbitration award.<sup>4</sup>

ASC's attorney alerted the arbitrator that attorney's fees had not been awarded.<sup>5</sup> He claimed the parties understood that the contract required the payment of attorney's fees by the losing party.<sup>6</sup> Purvis disputed this view.<sup>7</sup> Over a year after the original hearing, the arbitrator modified the award and ordered Purvis to pay ASC's attorney's fees.<sup>8</sup>

Purvis disputed the award of attorney's fees and filed a petition in superior court to vacate this part of the award.<sup>9</sup> The superior court vacated the award because the arbitrator manifestly disregarded the law and the terms of the contract and did not state the grounds for the award.<sup>10</sup>

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1. *Purvis Sys., Inc. v. Am. Sys. Corp.*, 788 A.2d 1112, 1113 (R.I. 2002).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 1113-14.

6. *Id.*

7. *Id.*

8. *Id.* at 1114.

9. *Id.*

10. *Id.*

## BACKGROUND

The court's role in reviewing arbitration awards is "extremely limited."<sup>11</sup> Under section 10-3-12 of the Rhode Island General Laws, arbitration awards may be vacated in four circumstances including instances involving procurement of the award by corruption, corruption or partiality of the arbitrator, where the arbitrators exceed their power, or where the arbitrator behaves in a way that substantially prejudices the rights of one of the parties.<sup>12</sup> In addition, case law states an award may be vacated if it is irrational or the arbitrator "manifestly disregarded the law,"<sup>13</sup> but not if the arbitrator made a mistake of the law.<sup>14</sup> If the award is based on a plausible interpretation of the contract and it is within the arbitrator's authority to decide the issue in question then the award should be upheld.<sup>15</sup>

## ANALYSIS AND HOLDING

Purvis argued the arbitrator did not have the power to decide the issue of attorney's fees or to modify the award.<sup>16</sup> The Rhode Island Supreme Court found that the arbitrator did not exceed his powers by deciding the issue of attorney's fees.<sup>17</sup> AAA rules, the language of the contract, and Purvis's demand for the arbitrator to determine the parties' rights gave the arbitrator the authority to interpret the meaning of the phrase in the subcontract that "all expenses of the arbitration shall be assessed against the losing party and that said expense may be added to any judgment that may be entered."<sup>18</sup> The supreme court also held that the arbitrator had the power to modify the award because the arbitrator had not addressed the issue of attorney's fees in the original award, which left the issue unresolved.<sup>19</sup>

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11. *Id.* (quoting *Romano v. Allstate Ins. Co.*, 458 A.2d 339, 341 (R.I. 1983)).

12. *Id.* at 1115 (citing R.I. GEN. LAWS § 10-3-12 (2002)).

13. *Id.* (citing *Prudential Prop. & Cas. Ins. Co. v. Flynn*, 687 A.2d 440, 442 (R.I. 1996)).

14. *Id.* (quoting *Westminster Constr. Corp. v. PPG Indus., Inc.*, 376 A.2d 708, 711 (R.I. 1977)).

15. *Id.* (quoting *Jacinto v. Egan*, 391 A.2d 1173, 1176 (R.I. 1978)).

16. *Id.* at 1115-16.

17. *Id.* at 1115.

18. *Id.*

19. *Id.* at 1116-17.

The court concluded that the superior court justice improperly vacated the arbitrator's award of attorney's fees.<sup>20</sup> In light of the limited review of arbitration awards, the court found that the superior court justice substituted his own interpretation of the contract for the arbitrator's decision.<sup>21</sup> The court based its decision on the fact that the parties had contracted for binding arbitration<sup>22</sup> and the strong public policy in favor of the finality of arbitration awards.<sup>23</sup> The court also asserted that the arbitrator was not required to set out the grounds for awarding attorney's fees because such a requirement "would undermine the very purpose of arbitration, which is to provide a relatively quick, efficient and informal means of private dispute settlement."<sup>24</sup>

#### CONCLUSION

The Rhode Island Supreme Court held that an arbitrator in a commercial dispute can award attorney's fees if the parties' contract provides for this type of award. The arbitrator was allowed to modify the previous award because the original award did not address the issue of attorney's fees. The court overturned the superior court and reinstated the arbitrator's award.

Cassandra S. Shaffer

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20. *Id.* at 1117.

21. *Id.*

22. *Id.*

23. *Id.* at 1118.

24. *Id.* (quoting *Westminster Constr. Corp. v. PPG Indus., Inc.*, 376 A.2d 708, 710 (R.I. 1977)).