



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

7th Circ. Reverses Union's \$2.3M Win In Pension Dispute

By **Kellie Mejdrich**

Law360 (March 25, 2024, 5:06 PM EDT) -- The Seventh Circuit reversed a Teamsters pension fund's \$2.3 million win in a dispute over withdrawal liability against a bulk transport company, finding that a lower court properly denied the union attorney fees but erred in ruling in the union's favor on the merits of the case.

In a **six-page opinion** docketed Friday, a three-judge panel reversed the merits portion of U.S. District Judge Philip P. Simon's **March 2023 decision** in favor of the multiemployer pension fund for Teamsters Local 142 and against Bulk Transport Corp. But the panel affirmed the part of Judge Simon's order that had denied attorney fees to the union in the Employee Retirement Income Security Act dispute.

The panel said Judge Simon erred in backing an arbitrator's determination that Bulk Transport owed approximately \$2.3 million in withdrawal liability, even though the collective bargaining agreement between the company and the Teamsters local specifically excluded the work for which withdrawal liability contributions were in dispute.

"Multi-employer pension plans are not privy to oral side deals between employers and unions. For multi-employer plans, enforcing the writings is vital," the panel said.

Judge Simon in March 2023 affirmed an arbitrator's withdrawal liability determination against Bulk Transport that had found a judgment in favor of the union was valid under two theories. First, the arbitrator had determined that the company was a successor to another company that had employed Teamsters union labor similarly, and second, that by its conduct of previously contributing to the pension fund on behalf of the disputed workers, Bulk Transport had tacitly agreed to apply the terms of the CBA to them.

But the panel said allowing amendment of a contract by conduct, as the arbitrator found was appropriate, and Judge Simon had upheld, would mean "multi-employer pension agreements need not be written after all," despite what federal laws say. The panel contrasted the need for multiemployer pension agreements to be written down with collective bargaining agreements, most terms of which could be changed by conduct.

"But the terms of pension contributions to multi-employer plans cannot be changed orally. The precise terms must be in writing — and, having been reduced to writing, must be enforced without any consideration of equitable arguments," the panel said.

The panel said it couldn't find one instance in case law showing that adoption by conduct could "change the substantive terms of an agreement to contribute to a multi-employer pension plan."

Because it had found Bulk Transport's arguments were correct, the panel said it would affirm the lower court's denial of attorney fees to the union.

The dispute addressed by the panel Friday has a tortured history of litigation — including the fact that arbitration proceedings that began in 2013 stretched on for nearly nine years before the issue was kicked up to federal court, according to Judge Simon's March 2023 opinion. Bulk Transport first sued in Indiana federal court in December 2021 over the \$2.3 million withdrawal liability dispute, which the fund demanded in 2012 after the company lost a contract and its contributions dwindled.

Both the Teamsters union local and Bulk Transport appealed to the Seventh Circuit in 2023, and the appellate panel heard oral arguments in December.

Mark Trapp, attorney for Bulk Transport, said in an email to Law360 on Monday he "was gratified by the Court's ruling on my client's behalf."

"They deserved to win, and finally did," he said.

Counsel for the Teamsters local didn't immediately return requests for comment Monday. A Teamsters 142

local spokesperson didn't immediately respond to a request for comment.

U.S. Circuit Judges Joel M. Flaum, Frank H. Easterbrook and Michael B. Brennan sat on the panel for the Seventh Circuit.

Bulk Transport Corp. is represented by Mark McKay Trapp of Conn Maciel Carey LLP.

The Teamsters Union Local 142 pension fund and its trustees are represented by Joseph Weishampel of Asher Gittler & D'Alba Ltd.

The cases are Bulk Transport Corp. v. Teamsters Union Local 142 et al., case numbers 23-1917 and 23-1563, in the U.S. Court of Appeals for the Seventh Circuit.

--Editing by Leah Bennett.

Update: This story has been updated with a comment from Bulk Transport Corp.

All Content © 2003-2024, Portfolio Media, Inc.