PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 20-1908

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VERIZON PENNSYLVANIA, LLC

v.

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, LOCAL 13000; COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO DISTRICT 2-13,

Appellants

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-18-cv-00394)
District Judge: Honorable Cynthia M. Rufe

Argued on January 21, 2021

Before: HARDIMAN, ROTH, Circuit Judges and *PRATTER, District Judge

(Opinion filed: September 8, 2021)

*The Honorable Gene E.K. Pratter, United States District Judge for the Eastern District of Pennsylvania, sitting by

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O P I N I ON

ROTH, Circuit Judge:

This appeal requires us to decide whether the well-established *functus officio* doctrine is still viable in labor arbitration cases. We hold that it is, and agree with the District Court that the arbitration award in this case cannot stand. The deference given to arbitration awards is almost unparalleled, but not absolute. An arbitrator's powers are derived from and limited by the parties' agreement, which is made against a background of default legal rules. Under these default rules, once the arbitrator decides an issue, the *functus officio* doctrine prohibits him from revising that decision without the parties' consent. He can decide other issues submitted by the parties, correct clerical errors, and even clarify his initial decision—but nothing more.

Verizon brought this action to vacate an arbitration award made pursuant to the Collective Bargaining Agreement (CBA) between it and Communication Workers of America, AFL-CIO, Local 13000 (the Union). In its Merits Award, the Arbitration Board held that Verizon violated the CBA by contracting with common carriers to deliver FiOS TV set-top boxes to "existing customers" for self-installation, work that used to be performed exclusively by Union Service Technicians (Workers). Yet, months later, the Board, under the guise of creating a "remedy," improperly expanded the scope of the violation identified in the Merits Award to include not only deliveries to both existing and *new* customers, but also the accompanying *self-installations*. Such revisions are precisely what the *functus officio* doctrine prohibits. Thus, we affirm the District Court's Order, vacating the Remedy Award to the extent that it awards damages for work that falls beyond

the outer bounds of the Merits Award. The outer bounds were the *delivery* of boxes to *existing* customers.

We also hold that the Board improperly awarded punitive damages, which the Parties agree are not permitted under the CBA. For this reason, we will affirm the District Court's Order, remanding the case back to the Board to redetermine what compensatory damages, if any, are appropriate.

I

Article 17.01 of the CBA provides that Verizon "will maintain its established policies as to the assignment of work in connection with the installation and maintenance of communications facilities owned, maintained and operated by the Company."[1] Article 13 provides that certain grievances, alleging violations of the CBA, must be submitted to the Board of Arbitration.

Verizon FiOS is a television, internet, and phone service. FiOS TV was first available in Pennsylvania in 2006. TV content enters the home through fiberoptic cables that lead into a "set-top box." When FiOS launched, a customer could obtain, upgrade, or replace a set-top box in either of two ways: (1) a Union Service Technician delivered the box to the customer's home and installed it (Option One), or (2) the customer picked up the box from a Verizon store and installed it herself (Option Two). In November 2007, Verizon added two more options (the mail options) for "adds, upgrades,

[1] Appx. 95.

downgrades, or swaps" for "existing customers": Verizon mails the box to the customer's home (at Verizon's expense) using a common carrier and either (3) the customer installs it himself (Option Three), or (4) a Service Technician comes to install it for a fee (Option Four).[2]

On February 25, 2008, shortly after learning about the mail options, the Workers filed Grievance "EXBD-005-08 Self-Installation of Set Top Boxes," demanding that "all work associated with the set top boxes must be performed by" the Workers.[3] They alleged that Verizon violated the CBA by contracting out Union work to common carriers through the mail options. They did not challenge instore pickup or self-installation under Option Two.

On July 7, 2016, the Board issued the Merits Award, ruling that the mail options violated Article 17.01. The Board defined the issue submitted as whether Verizon violated the CBA by "implementing a process to deliver set top boxes to existing customers by common carrier for customer self-installation. And if so, what shall be the remedy?"[4] It stated that "beginning when [FiOS] was implemented," Service Technicians "were assigned to deliver set top boxes that they installed,"[5] and that common carriers "who do the delivery work . . . are getting the advantage of work that is protected by Section 17.01."[6] The Board concluded that Workers "who have been denied the opportunity to perform the delivery work in question are entitled to compensation" and ordered Verizon

[2] *Id.* at 232, 305.
[3] *Id.* at 405.
[4] *Id.* at 229.
[5] *Id.* at 247.
[6] *Id.* at 252.

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