Employment Arbitration

Matthew P. McDonald

In *Gilmer v. Interstate,* 500 U.S. 20 (1991), the United States Supreme Court applied the Federal Arbitration Act to an employee's lawsuit against his employer. Because Gilmer had agreed to arbitrate such disputes, the employer was entitled to a court order compelling arbitration, and Gilmer was unable to litigate his claims against his employer.

Even after *Gilmer,* some commentators doubted whether the FAA would apply to all causes of action or to all employees. In *Circuit City Stores Inc. v. Adams,* the United States Supreme Court on March 21, 2001, made it clear that the FAA applies to all employees except employment contracts of seamen, railroad employees and other transportation workers. Assuming a broadly written clause, practically every dispute between an employee and an employer can be kept out of court. This includes cases involving federal discrimination statutes (e.g., Title VII, ADA, ADEA), federal wage and hour laws, state common law claims involving contract rights and torts (e.g. wrongful discharge), state statutes, and state constitutional provisions.

In its *Circuit City Stores, Inc. v. Adam's* decision, the United States Supreme Court upheld a mandatory arbitration provision in a pre-hire employment application, and compelled the arbitration of the employee's discrimination suit. Courts continue to uphold such agreements with regularity.

For example, in *Hightower v. GMRI, Inc.,* the plaintiff was a manager at an Olive Garden restaurant who brought a race and religion discrimination action against GMRI, the owners of the restaurant chain. Prior to the suit, GMRI had instituted a dispute resolution procedure that provided for binding arbitration. The plaintiff attended a meeting at which he signed an attendant sheet acknowledging receipt of materials to describe the company's new procedures. He continued to work at the Olive Garden for several months after the effective date of the policy.

After GMRI terminated him, the employee brought suit in Federal Court. When GMRI moved to compel arbitration, the employee claimed that he had never agreed to the new dispute resolution procedure. The Fourth Circuit Court of Appeals disagreed. It held that simply by continuing to work at the Olive Garden after learning of the new policy, the employee had evidenced his assent sufficiently to be bound by it. Accordingly, the Court mandated the case be arbitrated. Hightower demonstrates that courts will often go out of their way to find arbitration clauses enforceable.