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Supreme Court Limits Federal Court's Ability To Modify, Vacate, And Confirm Arbitration Awards

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In another case involving the Federal Arbitration Act (FAA), the U.S. Supreme Court in *Badgerow v. Walters* addresses the issue of whether federal courts can modify, confirm, or vacate an arbitration award when an underlying federal question is the only basis for their jurisdiction.

Justice Elena Kagan wrote for an 8-1 majority, holding there are circumstances in which federal courts do not have the jurisdiction in post-award claims – meaning that federal courts do not have the jurisdiction under Sections 9 and 10 of the FAA to vacate, modify, or confirm arbitration awards. The underlying case involved an unlawful termination claim.

Federal courts are permitted under Section 4 of the FAA to "look through" a petition to the "underlying substantive controversy" to establish jurisdiction. If the dispute presents a federal question, then the court has jurisdiction and may rule on the motion to compel arbitration pursuant to Section 4. *Vaden v. Discover Bank, 556 U. S. 49*. However, the question before the Supreme Court was if that same "looking through" approach can be used on arbitral awards under Section 9 and 10 of the FAA.

The plaintiff, Denise A. Badgerow, worked as a financial adviser when she signed an arbitration agreement during the course of her employment. She was later fired and initiated arbitration proceedings against her employer for unlawful termination. After her claim was dismissed by the arbitration panel, she filed in Louisiana state court to vacate the arbitral award. Her employer removed the suit to the U.S. District Court for the Eastern District of Louisiana and applied to confirm the award. The plaintiff subsequently attempted to remand back to the state court, stating the District Court did not have jurisdiction to vacate or confirm the arbitral award under Section 9 and 10 of the FAA.

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The District Court disagreed and utilized the “look through” approach under Section 4, determining the federal law claim in the underlying employment action was sufficient for jurisdiction. The Fifth Circuit later affirmed the District Court before Badgerow filed certiorari with the Supreme Court.

While a federal court normally would have jurisdiction over a suit “arising under” federal law, the Supreme Court instead held that “because this Court has held that the FAA’s provisions do not themselves support federal jurisdiction, a federal court must find an independent basis for jurisdiction to resolve an arbitral dispute.” With no jurisdictional basis, the District Court improperly used the “looking through” approach in Section 9 and Section 10 to satisfy the federal law claim requirement.

The Supreme Court notes that Section 4 contains express language that permits this “look through” approach that allows a petitioner to seek an order compelling arbitration in federal court. This express language does not exist in Sections 9 and 10 of the FAA to allow a petitioner to request to modify, vacate, or confirm an arbitral award. Therefore, an application of the “look through” approach is not applicable under ordinary principles of statutory construction, as there is no authorizing statutory language to support that approach.

While it might appear this decision only involves a technical dispute over federal court jurisdiction, it has wide-reaching effects for employers and employees engaged in arbitration or using arbitration agreements. Employers should consider contacting employment counsel to assist in strategizing around this Supreme Court decision.

In addition, employers should keep track of other important decisions involving the Federal Arbitration Act, as the Supreme Court is set to hand down decisions in a number of cases including *Viking River Cruises v. Moriana* and *Southwest v. Saxon*, which will additionally impact employers' ability to arbitrate claims with their employees.