

Jenkins v. Fink Baking Corp., 117 A.D.2d 713 (1986)

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Supreme Court, Appellate Division,  
Second Department, New York.

William JENKINS, Respondent,

v.

**FINK BAKING** CORP., Appellant.

Feb. 18, 1986.

### Synopsis

Terminated employee sued for reinstatement, back pay and other damages based on alleged wrongful discharge and breach of bargaining agreement. The Supreme Court, Special Term, Queens County, LeVine, J., denied employer's motion to dismiss, and it appealed. The Supreme Court, Appellate Division, held that arbitration award finding that discharge was for just cause barred relitigation of propriety of the discharge.

Reversed; motion granted and complaint dismissed.

**Procedural Posture(s):** On Appeal; Motion to Dismiss.

West Headnotes (1)

### [1] Labor and Employment 🔑 Matters Concluded

Arbitration award finding that employee was discharged for cause was final and definite and barred relitigation of propriety of discharge in subsequent action for reinstatement, back pay and damages based on alleged wrongful discharge and breach of bargaining agreement; although in unemployment compensation proceedings the administrative law judge could determine that the arbitration award was not entitled to collateral estoppel effect the administrative law judge's determination that employee was not guilty of the misconduct that was basis for his discharge did not affect validity of the arbitration award. 📄 McKinney's CPLR 3211(a), par. 5, 7511(b), par. 1(iii).

### Attorneys and Law Firms

**\*\*442** Manning, Raab, Dealy & Sturm, New York City, (Ronald Raab, on brief), for appellant.

Sheldon Ostro, New York City, (Alain Maertens Natchev, on brief), for respondent.

**\*\*443** Before MANGANO, J.P., and NIEHOFF, RUBIN and KUNZEMAN, JJ.

### Opinion

#### MEMORANDUM BY THE COURT.

In an action for job reinstatement, back pay and other damages arising out of a claimed wrongful discharge, and breach of a collective bargaining agreement, the defendant **Fink Baking Corp.** appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (LeVine, J.), dated December 5, 1984, as, upon reargument, adhered to its previous determination dated September 26, 1984, which denied the defendant's motion pursuant to 📄 CPLR 3211(a) (5) to dismiss the complaint.

Order reversed insofar as appealed from, with costs, order dated September 26, 1984 vacated, motion granted, and complaint dismissed.

The defendant employer correctly asserts that a prior arbitration award, which found simply that the plaintiff William Jenkins was discharged for just cause, was a “final and definite award on the subject matter submitted” (*cf.* 📄 CPLR 7511[b][1][iii] ), and, thus, pursuant to the principle of res judicata, bars relitigation of the propriety of the discharge (*see, Matter of Ranni [Ross]*, 58 N.Y.2d 715, 458 N.Y.S.2d 910, 444 N.E.2d 1328). The award did not, however, preclude a relitigation in the Unemployment Insurance Administrative Law Judge Section of the New York State Department of Labor of the circumstances surrounding Jenkins' dismissal, as a “just cause” discharge does not automatically preclude entitlement to unemployment compensation (*see, Matter of Hulse [Levine]*, 41 N.Y.2d 813, 393 N.Y.S.2d 386, 361 N.E.2d 1034. 📄 *Matter of Guimaraes [New York City Bd. of Educ.; Roberts]*, 109

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A.D.2d 1042, 487 N.Y.S.2d 162). The Administrative Law Judge could determine that the arbitration award was, under the circumstances, not entitled to collateral estoppel effect with respect to the plaintiff's claim for unemployment compensation (*see, Matter of Guimaraes [New York City Bd. of Educ.; Roberts]*, *supra* ). Thus, contrary to Special Term's reasoning, the Administrative Law Judge's determination that Jenkins was not guilty of the misconduct that was the basis for

his discharge went only to his eligibility for unemployment benefits and did not effect the validity of the arbitration award. Accordingly, Special Term should have granted the defendant's motion to dismiss the \*714 complaint.

**All Citations**

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