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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

NINO O'BRIEN,

Plaintiff and Appellant,

v.

SAJAHTERA, INC.,

Defendant and Respondent.

B282037

Los Angeles County  
Super. Ct. No. BC543454

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph R. Kalin and Mel Red Recana, Judges. Affirmed.

Hennig Ruiz, Rob Hennig and Brandon Ruiz; Law Office of Jeffrey A. Richmond and Jeffrey A. Richmond for Plaintiff and Appellant.

Stokes Wagner, Peter B. Maretz, Diana L. Dowell and Shirley A. Gauvin for Defendant and Respondent.

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## INTRODUCTION

This is an appeal from a judgment entered after the court denied the plaintiff's petition to vacate an arbitration award in favor of defendant and respondent Sajahtera, Inc. (Sajahtera), owner of the Beverly Hills Hotel (hotel). Plaintiff and appellant Nino O'Brien (plaintiff) worked for many years as a sommelier at the hotel and during his tenure he signed an agreement to arbitrate all employment-related disputes which might arise. After plaintiff filed the present lawsuit against Sajahtera in the Los Angeles Superior Court alleging he had been misclassified as an exempt employee and was improperly denied overtime wages, meal breaks, and rest periods throughout the time he worked at the hotel, Sajahtera sought to compel arbitration. The court ordered plaintiff's wage-and-hour claims and the related unfair competition claim to arbitration. After hearing seven days of testimony, the arbitrator found plaintiff was properly classified as an exempt employee and on that basis concluded plaintiff's wage-and-hour claims were moot. Plaintiff moved to vacate the arbitration award, which motion the trial court denied.

Arbitration awards are entitled to substantial deference by our courts and as a general matter, the courts of appeal do not vacate an arbitration award, even if plain errors of fact or law appear on the face of the award. This appeal rests primarily on plaintiff's claim that the arbitrator exceeded his authority, one of the few issues a trial court may consider in reviewing an arbitrator's award. We conclude, however, that plaintiff's arguments are thinly veiled challenges to the arbitrator's legal and factual findings which are not reviewable. We therefore affirm the judgment in favor of Sajahtera.

## **FACTS AND PROCEDURAL BACKGROUND**

Plaintiff worked as the Wine Captain (Sommelier) at the Beverly Hills Hotel from mid-2008 to July 2014. In April 2014, plaintiff initiated the present lawsuit against Sajahtera (doing business as The Beverly Hills Hotel) asserting five employment-related claims: retaliation under the Fair Employment and Housing Act (Gov. Code, § 12940 et seq.) (FEHA); failure to prevent retaliation under FEHA; failure to pay overtime wages (Lab. Code, §§ 510, 1194); failure to provide meal and rest breaks (Lab. Code, §§ 226.7, 512); and unfair competition (Bus. & Prof. Code, § 17200 et seq.). The court granted Sajahtera's petition to compel arbitration of the two wage-and-hour claims and the unfair competition claim, and stayed the two FEHA claims.

Judge Luis A. Cardenas (Ret.) of JAMS (arbitrator) conducted the arbitration in November 2015. Over the course of seven days, the arbitrator heard testimony from 26 witnesses including plaintiff, coworkers and other staff from the hotel, plaintiff's girlfriend, and two expert witnesses. The arbitrator issued a 22-page award summarizing the evidence presented, the applicable law, and his factual and legal conclusions which included, primarily, his finding that plaintiff was properly classified as an exempt employee in the "learned professional" category. Based on that finding, the arbitrator concluded plaintiff's wage-and-hour claims and associated unfair competition claim were moot.

Plaintiff subsequently filed a petition to vacate the arbitrator's award in the Los Angeles Superior Court. He argued the arbitrator applied the incorrect burden of proof and improperly considered plaintiff's personal experience and training (rather than the industry standard) to determine

whether plaintiff was a “learned professional” exempt from wage-and-hour law protections. The trial court denied the petition, granted plaintiff’s request to dismiss his FEHA claims, and entered judgment in favor of Sajahtera. This timely appeal followed.

## **DISCUSSION**

Plaintiff contends the arbitrator exceeded his authority by violating plaintiff’s unwaivable statutory rights under wage-and-hour laws, applying the incorrect burden of proof, examining evidence relating to plaintiff’s personal experience rather than focusing on the industry as a whole in order to determine whether he was a “learned professional” and therefore exempt from wage-and-hour laws, and conflating the “learned professional” exemption with the “artistic professional” exemption. We conclude these arguments are, at core, challenges to the legal and factual findings of the arbitrator which are beyond the permissible scope of our review.

### **1. Standard of Review**

We review the court’s decision on a petition to confirm or vacate an arbitration award de novo. (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9.) If the court’s ruling on a petition to vacate an arbitration award relies on a determination of disputed factual issues, we apply the substantial evidence test on those particular issues. (*Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1217.)

**2. The trial court properly denied plaintiff's petition to vacate the arbitration award.**

“Pursuant to Code of Civil Procedure section 1285, any party to an arbitration in which an award has been made may petition the court to ‘confirm, correct or vacate the award.’ Once a petition to confirm [or vacate] an award is filed, the superior court must select one of only four courses of action: It may confirm the award, correct and confirm it, vacate it, or dismiss the petition. [Citation.] ‘[I]t is the general rule that, with narrow exceptions, an arbitrator’s decision cannot be reviewed for errors of fact or law.’ (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 11.) Under section 1286.2, the court may vacate the award only under ‘“very limited circumstances.”’ [Citation.] Neither the trial court, nor the appellate court, may ‘review the merits of the dispute, the sufficiency of the evidence, or the arbitrator’s reasoning, nor may we correct or review an award because of an arbitrator’s legal or factual error, even if it appears on the award’s face. Instead, we restrict our review to whether the award should be vacated under the grounds listed in section 1286.2. [Citations.]’ [Citation.]” (*EHM Productions, Inc. v. Starline Tours of Hollywood, Inc.* (2018) 21 Cal.App.5th 1058, 1063–1064, third and fifth brackets in original, fn. omitted.)

As pertinent here, section 1286.2, subdivision (a)(4) of the Code of Civil Procedure authorizes a court to vacate an arbitrator’s award if “[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.” What constitutes an excess of power is, however, extremely limited. “Our Supreme Court has delineated the scope of the excess of powers justification for vacatur. (*Pearson Dental Supplies, Inc. v.*

*Superior Court* [(2010)] 48 Cal.4th [665,] 680 [(*Pearson Dental*)] [‘an arbitrator whose legal error has barred an employee subject to a mandatory arbitration agreement from obtaining a hearing on the merits of a claim based on such right has exceeded his or her powers.’]; *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1354–1364 [parties may restrict arbitrator’s powers by agreeing to expanded merit-based judicial review of an award]; *Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1182 [‘Absent an express and unambiguous limitation in the contract or the submission to arbitration, an arbitrator has the authority to find the facts, interpret the contract, and award any relief rationally related to his or her factual findings and contractual interpretation.’]; *Morris v. Zuckerman* (1968) 69 Cal.2d 686, 691 [‘Although the court may vacate an award if it determines that “[the] arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted” ..., it may not substitute its judgment for that of the arbitrators.’.)]” (*Comerica Bank v. Howsam* (2012) 208 Cal.App.4th 790, 830–831.)

Plaintiff’s primary assertion here is that the arbitrator exceeded his authority because the award violates plaintiff’s unwaivable statutory rights as well as the Legislature’s explicitly-stated public policy as encapsulated in California’s wage-and-hour laws. Specifically, plaintiff argues, “The California Supreme Court has repeatedly held that the employment laws of this State confer unwaivable statutory rights. The Court has affirmed and/or directed the vacation of arbitration awards that infringe employees’ statutory rights under those laws.” Plaintiff is partially correct but he improperly equates the *violation* of unwaivable statutory rights—which may

support vacatur of an arbitration award—with an unfavorable *resolution* of a claim relating to unwaivable statutory rights—which does not.

As plaintiff suggests, the California Supreme Court has held an arbitrator exceeds his or her powers by issuing an award that violates a party’s unwaivable statutory rights or that contravenes an explicit legislative expression of public policy. (See, e.g., *Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916 (*Richey*).) And plaintiff correctly notes employees’ rights under California’s wage-and-hour laws are unwaivable—i.e., employees may sue their employers for, *inter alia*, failure to pay minimum wages or overtime wages, notwithstanding any prior agreement by the employees to the contrary. (See, e.g., *Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 150–151 [explaining employee right to overtime compensation, accurate wage statements, meal breaks, outstanding wages upon termination, earned commissions, and vacation pay, as guaranteed under the Labor Code cannot “ ‘in any way be *contravened or set aside* by a private agreement, whether written, oral, or implied’ ”]; Lab. Code, § 219, subd. (a); Lab. Code, § 1194, subd. (a) [employee has the right to bring a civil action for unpaid minimum wage and overtime compensation “[n]otwithstanding any agreement to work for a lesser wage”]; see also Civ. Code, § 3513 [“Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.”].)

Putting these two ideas together, plaintiff repeatedly insists the arbitrator’s award here violates his unwaivable statutory rights. In support of his argument, plaintiff relies on *Pearson Dental, supra*, 48 Cal.4th at p. 665. Our colleagues in the

Sixth District recently explained that decision, and subsequent Supreme Court discussion of it, as follows:

“*Pearson Dental* addressed the trial court’s authority to vacate an arbitration award in favor of an employer in an age discrimination action under FEHA. The arbitrator’s award was based on a clearly erroneous statute of limitations ruling. Relying on *Armendariz* [*v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83 (*Armendariz*)], the trial court concluded that the arbitrator had exceeded his authority because the award was inconsistent with the claimant’s unwaivable statutory rights. (*Pearson Dental, supra*, 48 Cal.4th at p. 672.) Agreeing, the Supreme Court held that ‘an arbitrator whose legal error has barred an employee subject to a mandatory arbitration agreement from obtaining a hearing on the merits of a claim based on [the right to be free from unlawful discrimination under FEHA] has exceeded his or her powers within the meaning of Code of Civil Procedure section 1286.2, subdivision (a)(4), and the arbitrator’s award may properly be vacated.’ (*Id.* at p. 680.) The court distinguished the legal error as one ‘misconstru[ing] the procedural framework under which the parties agreed the arbitration was to be conducted, rather than misinterpreting the law governing the claim itself.’ (*Id.* at pp. 679–680.)

“In *Richey*, the Supreme Court elaborated on its *Pearson Dental* discussion: ‘*Pearson Dental* emphasized that its legal error standard did not mean that all legal errors are reviewable. [Citation.] The arbitrator had committed clear legal error by (1) ignoring a statutory mandate, and (2) failing to explain in writing why the plaintiff would not benefit from the statutory tolling period. The error addressed in *Pearson Dental* therefore kept the parties from receiving a review on the merits. ...’ (*Richey, supra*,



60 Cal.4th at p. 918.)” (*Ling v. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal.App.4th 1242, 1260–1261.) The California Supreme Court has also emphasized that, consistent with the general rule giving finality to arbitration awards, the holding in *Pearson Dental* would have “limited” and “narrow application.” (*Richey*, p. 918.)

*Pearson Dental* is not applicable here. Unlike the claimant in *Pearson Dental*, who was denied a hearing on the merits of his claims in *any* forum, plaintiff received a thorough hearing on the merits of his wage-and-hour claims. And it is beyond dispute that such employment claims may be the subject of arbitration. (See, e.g., *Armendariz*, *supra*, 24 Cal.4th at p. 102.) Nevertheless, plaintiff asserts the arbitrator exceeded his authority here and violated plaintiff’s unwaivable statutory rights under California’s wage-and-hour laws by:

- applying the incorrect burden of proof;
- misapplying the “learned professions” exemption to wage and hour laws; and
- conflating the “learned professions” exemption with the “artistic professions” exemption.

None of these contentions—even if they were correct—supports vacatur of the arbitrator’s award because each of these arguments directly targets alleged errors of fact and law by the arbitrator—errors that are beyond the scope of our review.

In sum, plaintiff has attempted—and failed—to repackage the arbitrator’s purportedly erroneous factual findings and legal conclusions as actions in excess of the arbitrator’s authority. Under well-settled authority, we decline plaintiff’s invitation to review the correctness of the arbitrator’s award. (E.g., *Gueyffier*

*v. Ann Summers, Ltd., supra*, 43 Cal.4th at p. 1184 [holding “[a]rbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact, and arbitral awards may not ordinarily be vacated because of such error”].)

### **DISPOSITION**

The judgment is affirmed. Sajahtera shall recover its costs on appeal.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.