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11th Cir. Clarifies Standard for New York Convention's Public Policy Defense to Foreign Arbitration Awards

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The dispute involved an arbitration related to alleged medical malpractice by doctors selected by Carnival Cruise Lines to treat a wrist injury of a Serbian employee of Carnival.

The employee's employment agreement with Carnival contained mandatory arbitration and forum selection clauses and a choice-of-law clause designating the governing law as the law of Panama, the law of the flag of the employee's cruise ship.

Notwithstanding the choice of Panamanian law, the employee filed a foreign arbitration asserting a claim under U.S. law, including the Jones Act, for vicarious liability against Carnival.

The arbitrator ruled that the employee could not assert the U.S. law claims and that she would not be entitled to relief under Panamanian law.

The employee then filed a lawsuit in a federal district court seeking to vacate or deny enforcement of the foreign award under the New York Convention. The district court denied the employee's petition, rejecting the employee's arguments that the arbitrator wrongfully deprived her of the opportunity to assert her claim under the Jones Act and that the award was void as against U.S. public policy.

On appeal, the Eleventh Circuit affirmed the district court's ruling. The Eleventh Circuit rejected the employee's argument that the court was required to refuse to enforce the award because she was allegedly deprived of a statutory remedy against Carnival. The court ruled that it would not refuse to enforce the award "simply because the remedies available under Panamanian law [were] less favorable" to the employee "than the remedies available under U.S. law."

The court further found that the remedies available under Panamanian law were not "so inadequate that enforcement would be fundamentally unfair."

The court held: "[T]he test for whether a court should refuse to enforce a foreign arbitral award based on public policy is not whether the claimant was provided with all of her statutory rights under U.S. law during arbitration. Rather the public-policy defense 'applies only when confirmation or enforcement of a foreign arbitration award would violate the forum state's most basic notions of morality and justice.'" The employee had not made that showing here.

Cvoro v. Carnival Corp., No. 18-11815 (11th Cir. Oct. 17, 2019).