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Supreme Court's New Arbitration Ruling: Limits Federal Jurisdiction For Confirming or Challenging Arbitration Awards Under the FAA

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On March 31, 2022, the Supreme Court of the United States issued a decision in *Badgerow v. Walters*, No 20-1143, addressing when federal courts have jurisdiction to rule on motions to confirm, modify, or vacate arbitration awards under the Federal Arbitration Act (FAA). In an 8-1 decision, the Court narrowed the circumstances in which federal courts have such jurisdiction. Under the Court's new decision, employers (and employees) will now more often be required to file their motions to confirm, modify, or vacate arbitration awards in state rather than federal court.

The Court's Decision

The Court's decision addresses a number of arcane questions of civil procedure and federal jurisdiction that could make for a nightmarish law school exam.

The decision starts from the well-accepted premise that the FAA does not grant federal courts jurisdiction. The FAA does, however, give parties to arbitration agreements certain rights, including the right to move a court to compel arbitration and the right to move a court to vacate, modify, or confirm an arbitration award. So the question that follows is: When can parties file these FAA motions in federal court and when must they file them in state court?

Under *Badgerow*, we now know that the answer is not the same for motions to compel arbitration and motions to vacate, modify, or confirm arbitration awards.

Under the Court's prior case law, *Vaden v. Discover Bank* (2009), an employer can file a motion to compel arbitration in federal court so long as the underlying dispute to be arbitrated involves a question under federal law. For example, if an employee is alleging claims under a federal statute, such as Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, or any of the myriad other federal employment laws, a federal court would have jurisdiction to rule on a motion to compel arbitration of those claims. In addition to this "federal question" jurisdiction, the federal court might also have jurisdiction based on the diversity of the parties. Under a federal court's diversity

jurisdiction, a court also has jurisdiction to hear disputes between parties that are citizens of different states where the amount in controversy exceeds $75,000.

In *Badgerow*, the Court held that a different analysis applies to motions to vacate, modify, or confirm arbitration awards, which are governed by different sections of the FAA. Unlike motions to compel arbitration, federal courts are not permitted to "look through" a motion to vacate, modify, or confirm to see whether there is a federal question involved in the underlying arbitration matter. Instead, a federal court must determine whether it has jurisdiction based on the motion itself.

Asking a court to vacate, modify, or confirm an arbitration award will usually raise questions about contract interpretation and enforcement. Contract law is usually state law. Thus, a motion to vacate, modify, or confirm arbitration awards will generally present questions of state law rather than federal law.

Since motions to vacate, modify, or confirm arbitration awards will rarely present federal questions on their face, federal courts will rarely have "federal question" jurisdiction over such motions. Federal courts may still have diversity jurisdiction if the parties on opposite sides of the motion to vacate, modify, or confirm arbitration awards are citizens of different states and the amount in controversy exceeds $75,000. It is also theoretically possible that a federal court could still have federal question jurisdiction on some other grounds, but the *Badgerow* decision did not delve into that subject.

Key Takeaways

Under the Supreme Court's new decision, employers will more often need to turn to state courts for motions to confirm, modify, or vacate arbitration awards under the FAA.

State courts historically have been more hostile to arbitration than federal courts. In losing the option of going to federal court to confirm some arbitration awards, arbitration may become marginally less reliable. However, this new decision should not affect the overall benefits that many employers conclude they receive from using employment arbitration.

In addition, the new decision will likely affect employers' strategies in moving to compel arbitration, because the scope of federal jurisdiction is broader for such motions. In seeking to compel arbitration, employers may now more frequently ask the federal court to retain jurisdiction pending the outcome of the arbitration so that the parties may return to that federal court to address any subsequent motion to vacate, modify, or confirm the resulting arbitration award.

Finally, by forcing employers (and other parties to arbitration agreements) more frequently to go to state court to vacate, modify, and confirm arbitration awards, the *Badgerow* decision will likely bring to the fore another question that has been looming on the horizon: do the FAA's provisions permitting motions to vacate, modify, and confirm arbitration awards even apply in state court? Several courts around the country have suggested that they do not, meaning that employers (and other parties to arbitration agreements) will need to rely on state arbitration statutes for such motions in some jurisdictions. But that is another topic for another day.

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