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# Bridging the Procedural Gap: Arbitration Decisions as a Basis for Collateral Estoppel - Benjamin v. Traffic Executive Association Eastern Railroads

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# BRIDGING THE PROCEDURAL GAP: ARBITRATION DECISIONS AS A BASIS FOR COLLATERAL ESTOPPEL[1]

*Benjamin v. Traffic Executive Association Eastern Railroads*[2]

## I. INTRODUCTION

Courts have long used the doctrine of collateral estoppel to preclude relitigation of previously determined issues. The fora for the previous determination is of importance in deciding whether to apply the doctrine. This Note will examine the application of the doctrine of collateral estoppel to arbitration decisions. In deciding the question, the courts' major consideration is the degree of procedural differences between the arbitration proceeding and a judicial proceeding. The more closely an arbitration resembles litigation in the procedural safeguards employed, the more likely that the arbitral decision will be accorded a preclusive effect. Unfortunately, as arbitration proceedings become more like litigation, their effectiveness and desirability decreases.

## II. BACKGROUND ON THE DOCTRINE OF COLLATERAL ESTOPPEL

### A. *Policy and Analysis*

The public faith in a judicial system rests on the predictability and effectiveness of that system.[3] A party seeking resolution of a dispute[4] must be afforded a degree of certainty in the outcome and knowledge that the resolution will be

1. For purposes of this Note, the effect of arbitration decisions on the doctrine of collateral estoppel will be limited to federal court proceedings.

2. 869 F.2d 107 (2d Cir. 1989).

3. *See* Brown v. Felsen, 442 U.S. 127, 131 (1979); Montana v. United States, 440 U.S. 147, 153-54 (1979); Vestal, *Preclusion/Res Judicata Variables: Adjudicating Bodies*, 54 GEO. L.J. 857, 858 (1966).

4. *See* Southern Pacific R.R. v. United States, 168 U.S. 1, 49 (1897) (stating "the very object for which civil courts have been established . . . is to secure the peace and repose of society by the settlement of matters capable of judicial determination"). *See also Montana*, 440 U.S. at 153 (a major goal of the judicial process is finality).

final.[5] Courts developed the doctrine of collateral estoppel[6] as one measure for ensuring that these policies are fulfilled.

The doctrine of collateral estoppel precludes a party or its privy from relitigating any factual issue which has been "actually litigated" in a prior action and which was necessary to the resolution of that action.[7] Collateral estoppel is used when the subsequent suit's basis is a different cause of action[8] and in certain circumstances, may involve those who were not parties to the original action.[9] The estopped party, however, may oppose the preclusion if it was not given a "full and fair" opportunity to litigate the particular issue in the original action.[10] Thus, collateral estoppel prevents needless litigation on previously determined issues, which promotes judicial economy, while being tempered by notions of fairness to the litigants.[11] In deciding whether to collaterally estop the relitigation of an issue, courts do not question whether the prior determination

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5. *See Southern Pacific R.R.*, 168 U.S. at 48-49 (enforcing rules preventing repetitious litigation is necessary to maintain social order); *Montana*, 440 U.S. at 153 ("Application of both doctrines [res judicata and collateral estoppel] is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdiction."). *See also Brown*, 442 U.S. at 131 (preclusion ensures judicial finality); Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294, 299 (1917) (The Court states that preclusion "is a rule of fundamental and substantial justice, 'of public policy and of private peace' . . . ." (citing Kessler v. Eldred, 206 U.S. 285 (1907))); 18 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4416 (1981) [hereinafter WRIGHT].

6. *See* 1B J. MOORE, J. LUCAS & T. CURRIER, MOORE'S FEDERAL PRACTICE ¶ 0.405[11] (1988) (where collateral estoppel is viewed as a part of res judicata) [hereinafter MOORE]. The terms "claim preclusion" and "issue preclusion" are the modern terms for res judicata and collateral estoppel, respectively. This Note will use the terms res judicata and collateral estoppel. *See also* Holland, *Modernizing Res Judicata: Reflections on the Parklane Doctrine*, 55 IND. L.J. 615, 615-16 (1980). Broadly, res judicata encompasses the effect of a final judgment both as a bar to further action upon the same claim, and as an estoppel as to matters necessarily litigated, although the claim in the subsequent action is different. MOORE, ¶ 0.405[1]. Recent cases tend to limit the term res judicata to the former usage and limit the term collateral estoppel to the latter. *See* Allen v. McCurry, 449 U.S. 90, 94 (1980) (noting the limited interpretation of res judicata); Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979).

7. *See Allen*, 449 U.S. at 94; *Parklane Hosiery Co.*, 439 U.S. at 326; *Montana*, 440 U.S. at 153; Cromwell v. County of Sac, 94 U.S. 351, 353 (1876). Certain prerequisites must be met before applying the doctrine of collateral estoppel: (1) the issue must be the same as that involved in the prior action; (2) the issue must have been actually litigated in the prior action; and (3) the determination of the issue must have been an essential part of the judgment in the prior action. *See* Greenblatt v. Drexel Burnham Lambert, Inc., 763 F.2d 1352, 1360 (11th Cir. 1985); Seven Elves, Inc. v. Eskenazi, 704 F.2d 241, 243-44 (5th Cir. 1983); Williams v. Bennett, 689 F.2d 1370, 1381 (11th Cir. 1982), *cert. denied*, 464 U.S. 932 (1983).

8. *See* Kremer v. Chemical Construction Corp., 456 U.S. 461, 466-67 (1982).

9. *Parklane Hosiery Co.*, 439 U.S. at 331.

10. *See Allen*, 449 U.S. at 95; Blonder-Tongue Laboratories, Inc. v. University of Ill. Found., 402 U.S. 313, 328-29 (1971), *reh'g denied*, 458 U.S. 1133 (1982).

11. The Evergreens v. Nunan, 141 F.2d 927, 929 (2d Cir. 1944), *cert. denied*, 323 U.S. 720 (1944) (only the determination of "ultimate" facts will be binding in subsequent litigation).

was right or wrong,[12] but rather whether the issue was clearly decided and necessary to that determination.

Policies favoring judicial economy[13] and prevention of inconsistent results[14] prompted the judiciary to formulate[15] the doctrine of collateral estoppel as well as the doctrine of res judicata.[16] These policies may outweigh other important judicial policies creating limited exceptions to the application of issue preclusion. Courts have concern when the application of collateral estoppel infringes on a party's federally protected rights. An arbitration decision should not be afforded a preclusive effect; federal treatment of an issue should not be barred[17] when Congress intended resolution of the statutory claim to be obtained in a judicial forum,[18] and arbitration cannot adequately protect that claim.[19]

When is an issue decided through arbitration[20] considered to be actually

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12. *See* WRIGHT, *supra* note 5, § 4416 (discussing the various interests served by issue preclusion, and its dangers).

13. "To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana*, 440 U.S. at 153-54 (1979).

14. *Id.*

15. Preclusion is a judicially created doctrine that restricts parties from relitigating claims or issues previously determined. *See generally* WRIGHT, *supra* note 5, §§ 4401-4426 (discussing rules of preclusion).

16. There are three characteristic differences between the two doctrines. Res Judicata prevents relitigation of claims; collateral estoppel ends controversy over issues. Res judicata applies regardless of whether there has been an adversary contest on a particular matter; collateral estoppel operates only when an issue has been litigated fully. Res judicata precludes only subsequent suits on the same cause of action; collateral estoppel may preclude relitigation of issues in later suits on any cause of action. J. FRIEDANTHAL, M. KANE & A. MILLER, CIVIL PROCEDURE 613 (1988).

17. *See* McDonald v. City of W. Branch, 466 U.S. 284, 289 (1984); Barrentine v. Arkansas-Best Freight Sys., 450 U.S. 728, 745 (1981); Alexander v. Gardner-Denver Co., 415 U.S. 36, 59-60 (1974).

18. *See McDonald*, 466 U.S. at 285; *Barrentine*, 450 U.S. at 743-46; *Alexander*, 415 U.S. at 44-45.

19. *See McDonald*, 466 U.S. at 285 (arbitration cannot provide an adequate substitute for judicial proceedings of rights under 42 U.S.C. § 1983); *Barrentine*, 450 U.S. at 743-46 (arbitration procedures are less protective of statutory rights than judicial procedures); *Alexander*, 415 U.S. at 44-45 (inadequate procedures can make arbitration a less appropriate forum for determining claims on statutory rights).

20. Arbitration, like judicial litigation, is a process of dispute resolution whereby an impartial 'judge' evaluates evidence and renders an opinion through reference to general principles of law. Unlike judicial litigation, arbitration typically permits the parties to select their own arbitrator, to stipulate to rules of evidence and procedure, to impose limitations on the arbitrator's power, and to determine the substantive legal rules governing the decisional process. As a non-judicial alternative, arbitration has the potential to alleviate overburdened court dockets, minimize the preparation of cases, reduce the expense and delay of litigation and relitigation, and improve compliance with awards. In addition, arbitrators who possess greater expertise in the subject matter of the dispute are likely to render more equitable decisions.

litigated for purposes of collateral estoppel in a subsequent federal court proceeding? To date, this question is answered on a case-by-case basis.[21] The Restatement of Judgments (Second) § 84 likewise suggests a case-by-case analysis.[22] A common analysis used by courts faced with this question is to analyze the procedural and fundamental aspects of the arbitration and to compare them to the procedures employed in litigation.[23]

Parties using arbitration may agree to the guidelines to be followed in resolving the dispute, thereby tailor-making the proceeding.[24] Thus, differences necessarily result between arbitral and court proceedings and create the problem presented here. Commonly, arbitration proceedings are less formal than trials and involve less strict evidentiary standards,[25] informal discovery,[26] and incomplete written reports.[27] Requiring a formal proceeding would defeat the effectiveness of arbitration.

A court must first consider whether the issue in controversy falls within the scope of either a valid agreement to arbitrate or a statute requiring arbitration.[28] If the case is appropriate for arbitration, the court decides whether another tribunal actually determined the necessary issue in the prior proceeding and whether the present issue is the same as the issue previously litigated.[29] The court also looks to see if the parties to the former adjudication are the same as in the present

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Mobilia, *Offensive Use of Collateral Estoppel Arising Out of Non-Judicial Proceedings*, 50 ALBANY L. REV. 305, 305 (1986).

21. Note, *The Preclusive Effect of Arbitral Determinations in Subsequent Federal Securities Litigation*, 55 FORDHAM L. REV. 655, 665 (1987) ("Any rule of preclusion for arbitral determinations, therefore, is judicially fashioned."). *See McDonald*, 466 U.S. at 288.

22. RESTATEMENT (SECOND) OF JUDGMENTS § 84 comment (1982) (The comment explains: "When the arbitration procedure leading to an award is very informal, the findings in the arbitration should not be carried over through issue preclusion to another action where the issue would otherwise be subjected to much more intensive consideration.").

23. Motomura, *Arbitration and Collateral Estoppel: Using Preclusion to Shape Procedural Choices*, 63 TULANE L. REV. 29, 32 ("Under the dominant approach, courts accord collateral estoppel to arbitral findings on a case-by-case basis, depending on the magnitude of the differences between the litigation and a given arbitration.").

24. *See* Legion Ins. Co. v. Insurance Gen. Agency, 822 F.2d 541, 543 (5th Cir. 1987), *reh'g denied*, 828 F.2d 772 (1987); Federal Deposit Ins. Corp. v. Air Florida Sys., Inc., 822 F.2d 833, 842 (9th Cir. 1987), *cert. denied*, 485 U.S. 987 (1988); Checkrite of San Jose, Inc. v. Checkrite, Ltd., 640 F. Supp. 234, 236 (D. Colo. 1986).

25. *See* Bernhardt v. Polygraphic Co., 350 U.S. 198, 203 n.4 (1956).

26. *See* Wilkes-Barre Publishing Co. v. Newspaper Guild of Wilkes-Barre, Local 120, 559 F. Supp. 875, 881 (M.D. Pa. 1982). However, parties to an arbitration have no power to invoke pretrial discovery themselves. *See* Burton v. Bush, 614 F.2d 389, 390 (4th Cir. 1980); Foremost Yarn Mills, Inc. v. Rose Mills, Inc., 25 F.R.D. 9, 11 (E.D. Pa. 1960). *See* Katsoris, *The Arbitration of a Public Securities Dispute*, 53 FORDHAM L. REV. 279, 287-88 (1984) (discussing discovery in arbitration). For citations to procedures of several arbitration organizations *see* Shearson/American Express, Inc. v. McMahon, 482 U.S. 220, 259-62 (1987) (Blackmun, J., dissenting).

27. *See Bernhardt*, 350 U.S. at 203-04; Wilko v. Swan, 346 U.S. 427, 436 (1953).

28. *See Wilko*, 346 U.S. at 430; Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 214 (1985).

29. *Blonder-Tongue Laboratories, Inc.*, 402 U.S. at 333 (1971) (citing Eisel v. Columbia Packing Co., 181 F. Supp. 298, 301 (Mass. 1960)).

dispute or if there are any other reasons bearing upon the applicability of collateral estoppel.[30]

### B. *The Caselaw*

The case-by-case analysis used to determine the applicability of collateral estoppel to arbitration decisions is exemplified by three major cases.

The Supreme Court in *Alexander v. Gardner-Denver Co.*[31] refused to collaterally estop an employee bringing a Title VII racial discrimination suit against his employer in federal district court. The arbitrator found that the plaintiff was "discharged for just cause" which, if binding on the Title VII claim, would necessarily cause the court to grant summary judgment against the employee in the later action.[32] The Court did, however, allow the arbitral findings to be entered into evidence. In reaching its decision, the Court notes that commonly in an arbitration proceeding, "[t]he record of the arbitration proceeding is not as complete; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under oath, are often severely limited or unavailable."[33] The Court further stresses that an arbitrator applies the "industrial common law of the shop"[34] and has "no general authority to invoke public laws that conflict with the bargain between the parties."[35] In so stating, the Court focuses on the limits of an arbitrator's power which does not extend to interpreting legislative intent.[36]

In another leading case, *Barrentine v. Arkansas-Best Freight System*,[37] the Supreme Court refused to preclude relitigation of an issue concerning violations of the Fair Labor Standards Act (FLSA), but again allows the arbitral decision to be entered into evidence. The *Barrentine* Court, as in *Alexander*, notes that the arbitrator's power pertains to the agreement between the parties and does not extend to individual statutory rights which are protected by the FLSA and Title VII.[38]

In *McDonald v. City of West Branch*,[39] the plaintiff brought suit in federal court under section 1983 of Title 42 following an adverse arbitral determination. The United States Supreme Court held that in a section 1983 action, "an arbitration proceeding cannot provide an adequate substitute for a judicial

30. *Parklane Hosiery Co.*, 439 U.S. at 331-33 (1979).
31. 415 U.S. 36 (1974).
32. *Id.*
33. *Id.* at 57-58.
34. *Id.* at 57.
35. *Id.* at 53.
36. *Id.* at 59.
37. 450 U.S. 728 (1981).
38. *Id.* at 746.
39. 466 U.S. 284 (1984).

trial."[40] The Court held that "according preclusive effect to arbitration awards in [section] 1983 actions would severely undermine the protection of federal rights that the statute is designed to provide."[41]

The Supreme Court in each of these cases approaches the problem of arbitral collateral estoppel on a case-by-case basis and bases its opinions on the differences between arbitration and litigation. The differences in these particular cases would create an infringement on a party's federally protected rights if the arbitration findings were given a preclusive effect.

Applying collateral estoppel to judicial determinations promotes several curative purposes, such as efficiency,[42] repose,[43] and consistency.[44] These goals are also met by allowing arbitral collateral estoppel, but only when the arbitration proceeding resembles litigation. The particular facts of a number of cases presented to lower federal courts have led to collateral estoppel being applied to arbitration decisions using the case-by-case analysis.[45] Federal courts have a jurisdictional interest[46] to protect when considering whether to preclude an issue determined outside of judicial fora. This interest is safeguarded by requiring the party seeking collateral estoppel to prove the reliability of the arbitration.[47] The reliability of an arbitral proceeding is analyzed by inquiry into the standards of proof applied in arbitration,[48] whether or not the parties were

40. *Id.* at 292.

41. *Id.*

42. *Montana*, 440 U.S. at 153 (1979).

43. *Id.* at 153-54.

44. *Id.* at 154.

45. Commentators generally agree with the case-by-case approach. *See* WRIGHT, *supra* note 5, § 4475; Carlisle, *Getting a Full Bite of the Apple: When Should the Doctrine of Issue Preclusion Make an Administrative or Arbitral Determination Binding in a Court of Law?*, 55 FORDHAM L. REV. 63, 97-98 (1986); Note, *supra* note 21, at 674-79 (1987).

46. Rights implied under a federal statute should be granted the same protection as an express cause of action because "[t]o say that a private cause of action is implied is to say that Congress intended such an action to exist." Wolfe v. E.F. Hutton & Co., 800 F.2d 1032, 1039 (11th Cir. 1986)(concurring opinion). *See Byrd*, 470 U.S. at 223 ("Suffice it to say that in framing preclusion rules in this context, courts shall take into account the federal interests warranting protection.").

47. *See* WRIGHT, *supra* note 5, § 4423, at 217 (under ordinary circumstances collateral estoppel is available without a need to prove the quality of the prior determination).

48. *See* Kunzelman v. Thompson, 799 F.2d 1172, 1176 (7th Cir. 1986); Guenther v. Holmgreen, 738 F.2d 879, 888 (7th Cir. 1984), *cert. denied*, 469 U.S. 1212 (1985); WRIGHT, *supra* note 5, § 4422.

represented by counsel,[49] the availability of discovery,[50] the evidentiary standards[51] employed and the opportunity to cross-examine witnesses.[52]

These factors are fundamental indicia of arbitral reliability, but need not all be present to apply collateral estoppel.[53] A court, in its discretion, may decide that the arbitration decision was reliable and the parties suffered no disadvantage by resolving their dispute outside the traditional judicial arena.[54] The court must examine the quality of the prior proceeding before invoking issue preclusion.

The Supreme Court has outlined the analysis courts should use before collaterally estopping a party. The Court of Appeals for the Second Circuit, likewise employed the requisite analysis to the facts of *Benjamin v. Traffic Executive Association Eastern Railroads*.[55]

## III. FACTS OF *Benjamin*[56]

Appellants Benjamin and Downey represented discharged employees of the defunct appellee Eastern Weighing and Inspection Bureau (EWIB). The other appellees were organizations related to the EWIB; the Traffic Executive Association Eastern Railroads (TEA-ER) and the Eastern Railroad Association (ERA).[57]

Following the elimination of the EWIB, the appellants filed this class action claiming entitlement to severance benefits under the Staggers Rail Act of 1980 (hereinafter the "Staggers Act").[58] The EWIB offered its discharged employees severance benefits in exchange for a release of all claims against it.[59] These benefits, however, failed to meet the minimum remunerative requirements of the

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49. *See* Powell v. Alabama, 287 U.S. 45, 69 (1932) (representation by counsel in civil or criminal proceedings is an aspect of due process); Potashnick v. Port City Constr. Co., 609 F.2d 1101, 1118 (5th Cir. 1980), *cert. denied*, 449 U.S. 820 (1980) (a litigant "requires the guiding hand of counsel at every step in the proceedings against him").

50. *See* FED. R. CIV. P. 26 (discovery entitles litigants to disclosure of relevant, non-privileged information).

51. *See* FED. R. EVID. 402, 403 (relevant evidence is admissible subject to a weighing of probative value and prejudicial effect). *See also* Greenblatt v. Drexel Burnham Lambert, Inc., 763 F.2d 1352, 1361 (11th Cir. 1985) (parties presented relevant evidence indicating arbitral reliability).

52. *See* Green v. McElroy, 360 U.S. 474, 496-97 (1959).

53. *See* Note, *supra* note 21, at 676-77.

54. *See McDonald*, 466 U.S. at 291 (1984); Alexander v. Gardner-Denver Co., 415 U.S. 36, 57-58 (1974). Procedurally reliable arbitrations should be given the same deference as court determinations; a presumption on non-preclusion is not warranted.

55. 869 F.2d 107 (2d Cir. 1989).

56. *Id.*

57. *Id.* at 108-09.

58. The Interstate Commerce Commission shall require rail carrier members of a rate bureau to provide the employees of such rate bureau who are affected by the amendments made by this section with fair arrangements no less protective of the interests of such employees than those established pursuant to section 11437 of Title 49, United States Code. 49 U.S.C. § 10706 note.

59. *Benjamin*, 869 F.2d at 109.

"New York Dock Conditions"[60] provided by the Staggers Act. The appellants complaint contained the Staggers Act claim (Count I) and additionally alleged fraud, breach of fiduciary duty, and violation of the Racketeering Influenced and Corrupt Organizations Act (RICO) (Counts II through IV).[61]

The Staggers Act deregulates the railroad rate industry and provides for protective benefits to rate bureau employees discharged as a result of deregulation.[62] Any dispute whether those persons terminated were employees of a rate bureau or not is subject to mandatory arbitration.[63] Thus, the appellees moved to compel arbitration on the Staggers Act claim and the appellants consensually submitted Count I to binding arbitration on a classwide basis. The terms of the arbitration[64] included that the appellants would not waive their right to have Counts II through IV decided by the district court.[65]

A majority of the three-member arbitration board expressly ruled that the EWIB was not a rate bureau.[66] As a result of this finding, the terminated employees represented by the appellants were not entitled to Staggers Act benefits.[67] The arbitral decision was affirmed by the district court which denied the appellants' motion for a trial *de novo* on Count I.[68] The crux of the instant decision rests on the district court's use of the doctrine of collateral estoppel to grant summary judgment in favor of the appellees on Counts II through IV.[69] Counts II through IV rely on a finding that the EWIB was actually a rate bureau as defined by the Staggers Act.[70] The district court, however, estopped the appellants from relitigating this issue because it had affirmed the arbitral finding that the represented employees were not rate bureau employees.[71]

Appellants Benjamin and Downey challenged the district court's decision to grant summary judgment in favor of the appellees on Counts II through IV, which necessarily rely on the court's use of the doctrine of collateral estoppel.[72]

On appeal, the Court of Appeals for the Second Circuit affirmed the district court's ruling making the substantive rule of law: The findings of an arbitration

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60. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

61. *Benjamin*, 869 F.2d at 109.

62. 49 U.S.C. § 10706 (1982).

63. *Id.*

64. Both parties set up informal procedural rules to govern the arbitration proceeding. They agreed to presentation of oral or written testimony, to extensive briefing and did, in fact, engage in informal discovery. At the hearing the plaintiffs cross-examined the defendants' witnesses who testified orally, and could have, if they had chosen, called in and cross-examined those witnesses who submitted their testimony on paper. *Benjamin*, 869 F.2d at 109.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 109-10.

70. *Id.* at 110.

71. *Id.*

72. *Id.*

board can serve as a basis for collateral estoppel where the arbitration does not infringe on the court's jurisdictional interest in adjudicating federal claims.[73]

## IV. THE *Benjamin*[74] COURT'S ANALYSIS

The *Benjamin* court begins its analysis by asserting that an arbitral finding can serve as a basis for collateral estoppel.[75] Neither party disputed this basic tenet. The court did not elaborate on this well-accepted principle.

The court then analyzes the procedural aspects of the arbitration to determine the propriety of employing collateral estoppel.[76] The Second Circuit cites the Supreme Court's opinion in *Parklane Hosiery Co. v. Shore*[77] for the principle that procedural differences between the prior action and the instant action may justify not applying the collateral estoppel doctrine.[78] Though the arbitral procedures were informal, the agreement did outline certain procedures, and there was no indication that the arbitration board could not make a "reasoned decision" because of the lack of formalities.[79] The *Benjamin*[80] court believes that the procedural differences between this arbitration proceeding and a judicial proceeding are insufficient to warrant *not* applying the doctrine.[81] The court did, however, state that other factors, (*i.e.*, resolving the prior action in an inconvenient forum) could make the application of collateral estoppel unwarranted.[82] The court concludes that the appellants, indeed, had a "full and fair opportunity to litigate the issue before the arbitration board."[83]

The court went on to state that such a ruling protects the judicial policy favoring economic resolution of disputes and protects the parties from inconsistent results.[84] In affirming the ruling of the district court, the Second Circuit states that not granting the arbitral decision a preclusive effect "would have left open the possibility for a result where the employees were *not* rate bureau employees under Count I, but *were* rate bureau employees under Counts II through IV."[85]

Conversely, a recent Second Circuit decision refused to render an arbitral determination to be affected by res judicata, or claim preclusion. In *Coppinger v. Metro-North Commuter Railroad*,[86] the court held that an arbitral decision

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73. *Id.* at 114, 116.
74. 869 F.2d 107.
75. *Id.* at 110.
76. *Id.*
77. 439 U.S. 322 (1979).
78. *Id.* at 331.
79. *Id.*
80. 869 F.2d 107.
81. *Id.* at 110.
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. 861 F.2d 33 (2d Cir. 1988).

rendered pursuant to the Railway Labor Act could not be used to preclude subsequent litigation on a section 1983 claim. The *Benjamin*[87] court distinguishes *Coppinger,*[88] yet uses that case to build its rationalization for collaterally estopping the appellants. The distinction was founded on the different natures of collateral estoppel and res judicata.

The court notes in *Coppinger*[89] that arbitration did not "protect constitutional guarantees as adequately as federal court procedures" and that the arbitrators lacked the authority and competence to properly adjudicate a statutory right.[90] The Second Circuit further notes the Supreme Court's reluctance to "grant arbitration findings preclusive effect over certain federal statutory and constitutional rights."[91] Since the issue presented to the arbitration board in the instant case was not a constitutional issue, but rather a Congressionally mandated application of federal statutory law, the preclusion was proper.[92]

## V. THE EFFECTS OF *Benjamin*[93]

The United States Supreme Court has recently questioned the assumption that arbitral decisions have the same preclusive effect as court judgments.[94] In *Benjamin,*[95] the Second Circuit further defines the procedural differences between litigation and arbitration in determining whether or not to apply the doctrine of collateral estoppel.[96]

The court notes that the issue in question is a matter akin to the "law of the shop" and well within the competence of the arbitration board.[97] Also, evidentiary standards were followed, the appellants had the opportunity to cross-examine witnesses, and discovery was available.[98] Such was not the situation in *Coppinger.*[99]

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87. 869 F.2d 107.

88. 861 F.2d 33.

89. *Id.*

90. *Benjamin*, 869 F.2d at 112-13.

91. *Id.* at 113.

92. *Id.* The appellants further argued that application of the doctrine of collateral estoppel violated their Seventh Amendment right to a jury trial. The Second Circuit, in refusing the argument, noted that the parties only have a right to a jury trial over common law issues. The court stated, "The issue of whether plaintiffs were rate bureau employees must be determined in a statutory proceeding which is not in the nature of a suit at common law." *Id.* at 115.

93. 869 F.2d 107 (2d Cir. 1989).

94. *See* Dean Witter Reynolds Co. v. Byrd, 470 U.S. 213, 221-23 (1985) ("We believe that the preclusive effect of arbitration proceedings is significantly less well settled than the lower court opinions might suggest . . .").

95. 869 F.2d 107 (2d Cir. 1989).

96. *Id.*

97. *Id.* at 113.

98. *Id.*

99. 861 F.2d 33 (2d Cir. 1988).

The question remains whether decisions such as *Benjamin*[100] will narrow the gap between litigation and arbitration. With courts examining the procedural differences of the two dispute resolution techniques in deciding to accord a preclusive effect to arbitration findings, parties may be forced to formalize arbitration to take advantage of the important policies that the doctrine of collateral estoppel protects. Such a result, however, lessens the desirability of arbitration as an *alternative* to litigation.

Four recent decisions cite *Benjamin*[101] for the general proposition that arbitral decisions can be accorded a collateral estoppel effect.[102] These cases did not expand on the use of procedural differences as the determinative factor in precluding issues previously decided in arbitration proceedings. Therefore, the effect of *Benjamin*[103] still remains.

ROBERT M. BAIN

100. 869 F.2d 107 (2d Cir. 1989).

101. *Id.*

102. *See* Leddy v. Standard Drywall, Inc., 875 F.2d 383, 385 (2d Cir. 1989) ("Arbitration proceedings can, but do not necessarily, have preclusive effect on subsequent federal court proceedings."); Matter of Chicago, Milwaukee, St. Paul and Pacific R.R. Co., 882 F.2d 1188, 1195 (7th Cir. 1989) (collateral estoppel was not applied because the party to be estopped was not a party or privy to the arbitration); Pennsylvania Engineering Corp. v. Islip Resource Recovery Agency, 710 F. Supp. 456, 462-63 (E.D.N.Y. 1989); Torre v. Falcon Jet Corp., 717 F. Supp. 1063, 1066 (D.N.J. 1989) (the findings of an arbitrator can have a collateral estoppel effect so long as the proceeding was fair and reliable).

103. 869 F.2d 107 (2d Cir. 1989).