UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of November, two thousand twenty-six.

Present:

SUSAN L. CARNEY,
MICHAEL H. PARK,
*Circuit Judges.**

NEW YORK PRESBYTERIAN HOSPITAL,

Petitioner-Appellant,

v. 25-2507

NEW YORK STATE NURSES ASSOCIATION,

Respondent-Appellee.

FOR PETITIONER-APPELLANT: JOHN HOUSTON POPE, Epstein, Becker & Green, PC, New York, N.Y.

FOR RESPONDENT-APPELLEE: OLIVIA SINGER, Cohen, Weiss, and Simon, LLP, New York, N.Y.

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* Judge Debra Ann Livingston, originally a member of this panel, did not participate in consideration of this appeal. The two remaining members of the panel, who are in agreement, have determined the matter.

Appeal from judgment of the United States District Court for the Southern District of New York (Abrams, *J.*)

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Petitioner New York Presbyterian Hospital (the "Hospital") appeals from a judgment of the United States District Court for the Southern District of New York confirming an arbitration award against it. The Hospital is a party to a 2019 collective bargaining agreement, modified by a 2022 memorandum of agreement (together, the "Agreement") with the New York State Nurses Association (the "Union") governing registered nurses at the Allen Emergency Department. Under the Agreement, the Hospital's failure to staff enough nurses on each shift constitutes a "Grid" violation. If this happens, the Union may file a grievance and proceed to mediation, and then arbitration. Section 3.04(7) of the Agreement provides that arbitrators "shall have the same remedial authority as an arbitrator under the collective bargaining agreement." App'x at 86, 289. Section 14.7—what the Hospital calls the "zipper" clause, Appellant's Br. at 24—also says that arbitrators "shall not have any power to add to or subtract from or otherwise amend this agreement." App'x at 154.

This dispute arose when the Union filed a grievance over Grid violations by the Hospital in 2023. The Arbitrator found evidence that the Hospital had committed 143 Grid violations. He interpreted Section 3.04(7) to confer broad remedial power and awarded three additional vacation days to each full-time RN at the Allen Emergency Department. The Hospital filed a petition to vacate in the Southern District of New York, arguing that the Arbitrator exceeded his authority and violated public policy by issuing a punitive award. The district court denied the petition and granted the Union's petition to confirm the award. This appeal followed. We

assume the parties' familiarity with the facts and issues, referring to them only as necessary to explain our decision.

"We review a district court's decision to confirm or vacate an arbitration award *de novo* on questions of law and for clear error on findings of fact." *Nat'l Football League Mgmt. Council v. Nat'l Football League Players Ass'n*, 820 F.3d 527, 536 (2d Cir. 2016).

The Hospital first argues that the Arbitrator exceeded his authority under the Agreement. In such cases, it is "the arbitrator's construction of the contract and assessment of the facts that are dispositive." *Id.* On review, we ask "whether the arbitrator's award draws its essence from the collective bargaining agreement." *Saint Mary Home, Inc. v. Serv. Emp. Int'l. Union, Dist. 1199*, 116 F.3d 41, 44 (2d Cir. 1997) (internal quotation marks omitted). "As long as the arbitrator was even arguably construing or applying the contract . . . and did not ignore the plain language of the contract, the award should ordinarily be confirmed." *N.Y.C. & Vicinity Dist. Council of United Bhd. of Carpenters & Joiners of Am. v. Ass'n of Wall-Ceiling & Carpentry Indus. of N.Y., Inc.*, 826 F.3d 611, 618 (2d Cir. 2016) (internal quotation marks omitted).

This appeal is controlled by *New York Presbyterian Hospital v. New York State Nurses Ass'n*, 180 F.4th 482 (2d Cir. 2026) ("*New York Presbyterian I*"). That case involved an arbitration of another Grid dispute between the same parties, and the arbitrator relied on a provision identical to Section 3.04(7) to award nurses on under-staffed shifts in the Hospital's Cardio-Thoracic Intensive Care Unit a monetary remedy. We rejected the Hospital's argument that the arbitrator exceeded her authority: she had "reasonably interpreted" the text to confer broad remedial power, and so she was "arguably construing or applying the contract." *Id.* at 487. The Hospital argued that the monetary remedy adjusted wages in violation of a specific provision

setting nurses' pay and a "zipper" clause that forbade arbitrators to amend the contract. We held that the monetary award "did not permanently adjust wages . . . or derive a new contract term," but only "issued a temporary remedy for the Hospital's breach of contract which drew upon the Agreement itself," and concluded the award did not violate "the Agreement's only limitation—the 'zipper' clause." *Id.* at 488. The same holds true here. The Arbitrator's vacation award did not amend the contract by deriving a new term, and it was arguably construing the text of the agreement. So we will not vacate the award for exceeding the arbitrator's authority.

Next, the Hospital argues that the Arbitrator imposed a punitive remedy when he granted the nurses three additional vacation days and that this violated a public policy against punitive arbitration awards. We have not decided whether a public policy forbids punitive arbitration awards. But "[b]efore considering whether such a public policy exists, we must first assess whether the Arbitrator's monetary award was punitive to begin with." *New York Presbyterian I*, 180 F.4th at 489. To distinguish "compensatory" from "punitive" awards, we "look[] to the Arbitrator's subjective intent in issuing the award and the objective nature of the award." *Id.* The Arbitrator satisfied the objective prong if he "made specific factual findings regarding the nurses' harms" and "tailored the [] award to make the impacted nurses whole for the harm they suffered." *Id.* at 490.

This award was not punitive because "[c]ompensating a nurse for excessive workload is not a penalty or punitive award giving nurses additional pay." App'x at 69. Its objective structure is compensatory. The arbitrator made detailed findings to identify 143 Grid violations, which he found contributed to "excessive workload, unsafe working conditions, or burnout." *Id.* at 70. He concluded that the parties had negotiated the Agreement to avoid precisely those harms.

Id. at 69. And because the harm was excessive workload, he concluded "the appropriate remedy is three vacation days for each full-time regular Allen ED RN." *Id.* The subjective and objective elements of the test are both satisfied. So even if there is a public policy against punitive arbitration awards, this award would not violate it.

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We have considered the Hospital's remaining arguments and find them to be without merit. For the foregoing reasons, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court