# Consideration and Mutuality Remain Key for Enforceable Employment Arbitration Agreement

## *Sniezek v. Kansas City Chiefs Football Club* --- *S.W.3d* ---, 2013 WL 661632 (Mo.App. W.D. February 26, 2013)

This decision underlines the importance of observing the contractual nature of an agreement to arbitrate. It is also another case which warns of the dangers of an employer: a) relying on the mention of, or reference to, outside or ancillary agreements as a substitute for explicitly being bound by specific terms of the agreement at issue; and, b) not signing the agreement.

In 1982, the Kansas City Chiefs (hereafter "Chiefs") hired Sniezek as their Community Relations Director. After she accepted her job on March 8, 1982, and on her first day at work, she was presented with numerous documents for signing. These included one entitled, "Agreement" and included language whereby Sniezek agreed to be bound by the Constitution and By-Laws of the National Football League ("NFL") and that she agreed "that all matters in dispute between [her] and the [Chiefs] shall be referred to the Commissioner and that his decision shall be accepted as final, binding and conclusive on me and on the [Chiefs]…". The agreement did not contain any specific statement by the Chiefs of its being bound, nor did anyone sign the Agreement on behalf of the Chiefs.

In January 2011, the Chiefs terminated Sniezek's employment. She filed a charge of discrimination with the Missouri Human Rights Commission and filed an age discrimination action in state court after receiving a right to sue notice. The Chiefs filed Motion to Compel arbitration, asserting that Sniezek signed the Agreement on her first day of work, and that it contained a valid and enforceable arbitration agreement. Sniezek opposed the Motion; the trial court denied it; and the Chiefs appealed.

On appeal, the appellate court observed that the burden to prove the existence of a valid and enforceable arbitration agreement was on the Chiefs. This meant the Chiefs had to show essential elements of a contract – offer, acceptance, and bargained for consideration. The Chiefs argued that the arbitration agreement was supported by two forms of consideration: their mutual promise to arbitrate and their initial offer of at-will employment.

The appellate court found no mutuality of obligation in the Agreement because it contained no promise by the Chiefs to arbitrate. The language on which the Chiefs continued to rely showed that only Sniezek had agreed to be bound: "[n]owhere did "the Club" i.e., the Chiefs, agree to do anything….[they] are asking us to find that Sniezek could bind the Chiefs, by her signature, to the same promises she made in the Agreement. The plain language of the Agreement contains no promises by the Chiefs." The court rejected the Chiefs' argument that the NFL constitution and bylaws requiring arbitration in all employee disputes provided the necessary mutuality. The Court also rejected the Chiefs related argument that this fact of obligation was incorporated into the Agreement by reference: "The mere mention of [those documents] in the Agreement…did not incorporate…[their]… terms …into the Agreement. (citation omitted)".

The court also found there was no consideration in Sniezek's continued employment as of the day she signed the Agreement. This was because the Chiefs presented the arbitration contract to her after they had offered, and she had accepted, the offer of employment. Therefore, she was in the same position both before and after they presented the contract to her. The court also found that since Sniezek's at-will employment relationship with the Chiefs was not enforceable at law, then any obligation she may have had during her employment ended when the Chiefs terminated its employment relationship with her.

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This decision reinforces that employers interested in arbitration agreements for disputes with their employees-at-will are safer if they: 1) make signing an arbitration contract or agreement a pre-condition to employment; 2) make sure the agreement to arbitrate makes clear both the employee and employee are bound by it; 3) include the terms to be relied upon in the agreement itself or perhaps attached as an exhibit and specifically incorporated by a statement to that effect; and, 4) have a representative of the employer sign the agreement to acknowledge its binding the employer. Of course, each case may be different, but these basic steps can help an employer carry its burden of proving the existence of a valid and enforceable agreement to arbitrate.

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