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1Appeals panel says arbitration not only wayPat MilhizerBy Pat Milhizer
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Fired employees who "shall be entitled to" arbitration under their employment contract can still go to court if they file a lawsuit against their former employer, a state appeals panel has ruled.

The appellate ruling reverses a Cook County judge's decision to force a fired Chicago Teachers Union employee into arbitration to handle her claim that her dismissal violated her contract. The former union employee can now pursue her claim in a courtroom.

After Diana Sheffer was fired from her union job, she filed a breach-of-contract suit against the union.

The union responded with a motion to compel arbitration, citing the part of the employee contract that states that dismissed workers "shall be entitled to a hearing by an impartial arbitrator."

Circuit Judge Mary Anne Mason granted the union's motion last year.

Sheffer appealed, contending that she shouldn't be subjected to mandatory arbitration.

The 1st District Appellate Court agreed with Sheffer, reversing Mason's ruling Friday in an unpublished order written by Justice James R. Epstein.

The appeals panel acknowledged that Illinois public policy favors arbitration. But contracts that use the phrase, "shall be entitled," confer an option and not an obligation, Epstein wrote.

"Had defendants intended to deprive plaintiff of her access to a judicial forum, they could have included language making arbitration mandatory," Epstein wrote.

The union cited several cases that interpret the word "may" as being considered mandatory arbitration. The same standard should also apply to the word "shall," the union argued.

Epstein responded that various courts have interpreted "may" as meaning "mandatory" and "permissive."

"But in no context," he wrote, "and in none of defendants' cited cases, has the phrase 'shall be entitled' been held to be a mandatory language that requires arbitration."

In conclusion, Epstein wrote, the parties simply did not have an agreement to arbitrate.

Sheffer was represented by Ruth I. Major and Laura M. Rawski of the Law Offices of Ruth I. Major P.C.

The union was represented by Robin B. Potter of Robin Potter & Associates P.C.

Neither side could be reached for comment by early this afternoon.

Justices James Fitzgerald Smith and Joseph Gordon concurred in the ruling, which is *Diana Sheffer v. Chicago Teachers Union and Marilyn Stewart*, No. 1-10-1709.

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