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Individual Employment Rights Arbitration in the United States: Actors and Outcomes

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Abstract

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Keywords

conflict resolution, arbitration, nonunion employment relations, repeat player effects

Disciplines

Collective Bargaining | Dispute Resolution and Arbitration | Labor and Employment Law | Unions

Comments

Required Publishers Statement

INDIVIDUAL EMPLOYMENT RIGHTS ARBITRATION IN THE UNITED STATES: ACTORS AND OUTCOMES

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The authors examine disposition statistics from employment arbitration cases administered over an 11-year period by the American Arbitration Association (AAA) to investigate the process of dispute resolution in this new institution of employment relations. They investigate the predictors of settlement before the arbitration hearing and then estimate models for the likelihood of employee wins and damage amounts for the 2,802 cases that resulted in an award. Their findings show that larger-scale employers who are involved in more arbitration cases tend to have higher win rates and have lower damage awards made against them. This study also provides evidence of a significant repeat employer-arbitrator pair effect; employers that use the same arbitrator on multiple occasions win more often and have lower damages awarded against them than do employers appearing before an arbitrator for the first time. The authors find that self-represented employees tend to settle cases less often, win cases that proceed to a hearing less often, and receive lower damage awards. Female arbitrators and experienced professional labor arbitrators render awards in favor of employees less often than do male arbitrators and other arbitrators.

With the decline of collective representation, contemporary employment relations are increasingly focused on individualized determination of terms and conditions of employment. Statutory rights, not unions, are becoming the primary check on managerial prerogatives in the workplace (Piore and Safford 2006; Colvin 2012). However, despite the reduction in collective action and industrial strife, this changed environment has seen a growth in conflicts around individual rights in the workplace. The

resolution and outcomes of these conflicts are central to determining the nature of the employment relationship in this era.

Just as collective bargaining agreements are enforced through the unique American industrial relations system, individual employment rights, such as those under Title VII of the Civil Rights Act of 1964, are enforced through a system that includes administrative agencies, civil courts, and, more recently, private arbitration forums. In this study we examine the operation and outcomes of this major new institutional structure for the resolution of individual rights conflicts in the United States—the arbitration of employment rights claims under mandatory employer-promulgated procedures.

Mandatory arbitration procedures allow employers to require all nonunion employees to agree as a condition of employment to resolution of individual statutory rights claims, such as those under Title VII of the Civil Rights Act, through private arbitration, barring recourse to the public court system (Stone 1996). The possibility of avoiding employment lawsuits in court with high litigation costs and the danger of large jury awards has encouraged increasing numbers of employers to adopt mandatory arbitration procedures (Colvin 2003b). Precise figures on the extent of mandatory arbitration are difficult to come by, though studies estimate a quarter or more of all nonunion employees in the United States are covered by these procedures (Colvin 2008; Lewin 2008). This suggests that mandatory arbitration is now a much more widespread institution in employment relations than union representation, which had shrunk to only 12.5% of the workforce by 2012 (BLS 2013).

The Supreme Court stated in *Mitsubishi Motors v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985), and later reiterated in *Gilmer*, 50 U.S. 20 (1991), that "[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum" (*Mitsubishi Motors*, 473 U.S. at 628). But how are substantive rights processed and resolved in this new institution, and what are the implications for employment relations? Our analysis examines national-level data on employment arbitration cases administered by the American Arbitration Association over an 11-year period (2003–13). The extensive time range combined with information on all dispositions, not just awards, provides a more thorough source of data than previous research on AAA employment arbitrations (e.g., Bingham 1997; Colvin 2011) and a broader economy-wide picture of the operation of employment arbitration than previous work focused on specific sectors such as securities industry arbitration (e.g., Lipsky, Lamare, and Gupta 2013). In addition, we analyze how variation in arbitrator characteristics affects outcomes and how outcomes vary regionally across the country. We also analyze one of the most controversial issues in relation to mandatory arbitration procedures: whether employers hold a systematic advantage as repeat players in the process.

Theory and Literature Review

Arbitrator Characteristics and the Arbitrator Selection Processes

Parties in arbitration have a unique ability to influence who will preside over their case. In arbitration, parties may designate a specific arbitrator in the original contract or together select an arbitrator from a list supplied by an arbitration service provider, taking turns striking names until only one remains. In a survey of 743 lawyer members of the Dispute Resolution Section of the American Bar Association, Brown and Schneider (2014) reported that one-quarter of arbitrators were selected by parties/clients and 63% were selected through a provider "strike list." If arbitrator characteristics affect case outcomes, parties with the resources and institutional knowledge may be able to capitalize on this information and influence likely outcomes through the arbitrator selection process.

A body of research documents parties' reliance on arbitrator background characteristics prior to selecting an arbitrator in labor disputes under collective bargaining agreements (Lawson 1981; Block and Steiber 1986; Bloom and Cavanaugh 1986; Bemmels 1988a, 1988b, 1990; Thorton and Zirkel 1990; Bingham and Mesch 2002). As Dworkin (1974: 200) stated, "It is well known that companies and unions conduct an extensive preliminary inquiry into an arbitrator's background and reported decisions prior to agreeing upon his selection." In unionized workplaces, unions exert a countervailing force in the labor arbitrator selection process because of their institutionalized role as a repeat player representing the bargaining unit across multiple arbitration cases. By contrast, individual employees are unlikely to be in more than one employment arbitration case. In addition, whereas some employees are able to retain experienced employment attorneys with knowledge of the employment arbitration setting who can serve as a countervailing source of expertise, many others are unrepresented or represented by plaintiff attorneys who do not specialize in the employment area or who lack extensive experience with employment arbitration (Colvin and Pike 2014). This potentially leaves individual nonunion employees at a distinct disadvantage relative to larger employers who participate more frequently in employment arbitration and can benefit from experienced defense counsel and greater informational resources to select an arbitrator more likely to be favorable to them.

As a first stage of analysis, we can find evidence suggesting that superior arbitrator selection by one of the parties may affect outcomes if the results of arbitral proceedings vary with the characteristics of the arbitrator. That is, if we see systematic variation in outcomes by arbitrator characteristics, then knowledgeable parties have the potential to exploit these differences through selection of arbitrators who display these characteristics. A second, more direct, indication of the impact of arbitrator selection is the potential for repeat players to have a systematic advantage in obtaining more favorable outcomes in arbitration. We begin by discussing the potential effects of arbitrator characteristics and then turn to the issue of repeat player effects.

Professional Background and Status

Do professional background and status affect arbitral decision making? Whereas employment arbitration is a relatively recent phenomenon, the system of labor arbitration used to resolve disputes in unionized workplaces is long-standing. The cadre of professional neutral labor arbitrators has won a well-deserved reputation for respect for due process and fairness in decision making. Some of these same arbitrators are now among those who decide employment cases in mandatory arbitration proceedings. Do labor arbitrators who also practice employment arbitration differ in their decision making from other employment arbitrators? Labor arbitrators have broad authority to interpret collective bargaining agreements as the "common law of the shop" and apply the principles of just cause and progressive discipline. Professional labor arbitrators acting in an employment arbitrator capacity may transpose some of these decision-making principles from labor arbitration onto the employment arbitration setting, which may result in more employee-favorable outcomes.

We investigate the potential impact of this type of professional background and status to affect arbitration outcomes by looking at the effect of arbitrator membership in the National Academy of Arbitrators (NAA), the leading professional organization of labor arbitrators. Membership in the NAA is a prestigious credential desired by labor arbitrators, reflecting a leading position in the profession. Membership requires substantial experience arbitrating labor-management disputes: at least five years of experience and a minimum of 60 written decisions over a six-year period (National Academy of Arbitrators 2012). This means that in addition to being labor arbitrators, NAA members are also highly experienced, which may influence their decision making. Experimental research support for an NAA member effect on employment arbitration outcomes can be found in a policy-capturing study by Klaas, Mahony, and Wheeler (2006), which found that labor arbitrators were more likely to render employee-favorable awards than employment arbitrators in this experimental setting.

Another aspect of professional background and status that may be associated with differences in arbitral decision making is former experience as a judge. Judges have increasingly developed arbitration practices after retirement from the bench. Whereas lawyers who enter the arbitration profession out of a regular legal practice career may lack experience in the neutral role, former judges enter arbitration after having served as public neutrals with the independence and impartiality required of the judicial role. This may translate into greater impartiality and fairness in decision making by arbitrators who are former judges. Although studies to date have not directly addressed the differences between judge and arbitrator decision making, Klaas et al. (2006) found that former jurors who had decided employment cases in the courts were more likely to rule in favor of an employee plaintiff than were employment arbitrators reviewing the same scenarios. At the same time, Clermont and Schwab (2004), analyzing outcomes in federal

court litigation, found that judges who decided cases without a jury were less likely to rule in favor of employee plaintiffs than were juries. However, these studies do not indicate whether former judges are more likely than other employment arbitrators to rule in favor of employee plaintiffs.

Gender

Researchers from varied fields have acknowledged that certain aspects of social behavior, personalities, and abilities differ between the sexes. Some psychologists have contended that these differences extend to decision making, arguing that women are more likely to base decisions on moral concerns with priorities given to social relationships, while male decision making is dominated by "rights [and] formal reasoning that uses a universalizable, abstract, and [an] impersonal style" (Larrabee 1993: 5). While these claims continue to be controversial, they have sparked vigorous debates about the existence and nature of gender differences in decision making (Gilligan 1982; Eagley and Wood 1999).

Numerous studies have empirically tested what effect, if any, gender has on decision making by judges, finding only limited or no effects of gender (see, e.g., Steffensmeier and Herbert 1999; Kulik, Perry, and Pepper 2003). Several studies have examined the effect of gender in labor arbitration, with mixed results. Most studies found no differences between male and female labor arbitrators (Zirkel 1983; Bigoness and Dubose 1985; Scott and Shadoan 1989; Thorton and Zirkel 1990); among studies that did find an effect, Bemmels (1990) found that women arbitrators were more favorable to grievants, while Caudill and Oswald (1993) found that they were less favorable. In the only study to date examining the effect of gender in the employment arbitration setting, Lipsky et al. (2013) found that in securities industry employment arbitrations administered by the Financial Industry Regulatory Authority (FINRA), female arbitrators awarded larger amounts than male arbitrators in a simple bivariate comparison, but there was no significant difference once control variables were added to the model. As Lipsky et al. (2013) noted, however, their results might have been influenced by the specific industry setting of the securities industry in which FINRA arbitrations occur, with its well-documented history of sex discrimination and harassment issues.

The existing literature does not provide a basis for predicting gender differences in decision making in one direction or the other. It is important to recognize, however, that life experiences and career trajectories of female employment arbitrators may differ in important respects from those of male arbitrators.

Repeat Player Effects

Repeat player effects have been a long-standing concern in research on dispute resolution. In his pioneering study, Galanter (1974) argued that

regular participants in litigation have systematic advantages over parties who do not participate regularly in the system. Some advantages of repeat players derive from the likelihood that they will be larger, more sophisticated organizations. Advantages of size include greater resources to pursue resolution of a case, ability to hire better legal counsel, and more experience and expertise in navigating the process of dispute resolution. The potential advantages of being a large repeat player in litigation are likely to recur in employment arbitration. We also might expect repeat employers to win more often and pay lower awards if they tend to be larger organizations with more sophisticated internal grievance procedures that filter out stronger employee claims before they are filed with an outside agency (Hill 2003; Colvin 2003a, 2008; Sherwyn, Estreicher, and Heise 2005). In employment arbitration, employers are likely to be the repeat players, leaving individual employees who are participating in their first case potentially at a distinct disadvantage (Bingham 1997, 1998a, 1998b; Colvin 2008). This is in contrast to the situation in labor arbitration, in which management and the union are countervailing institutional forces both likely to be involved in repeat cases. It is conceivable that plaintiff attorneys could play a parallel role as repeat players in employment arbitration, but it is unclear as yet whether they are effective in doing so.

Repeat player concerns are heightened in employment arbitration by fears that arbitrators, eager to be selected in future disputes, will betray their neutrality and award favorable decisions to potential repeat players. Though there may be an economic incentive for arbitrators to give biased rulings favoring employers, doing so would be a tremendous breach of ethical and professional codes. The key empirical question is whether we find not only that repeat employers do better in employment arbitration, but that they also gain an additional advantage from having selected the same arbitrator on multiple occasions (Colvin 2011). It should also be recognized that this type of repeat employer-arbitrator pairing advantage could arise even in the absence of bias on the part of the individual arbitrator. It could be that a repeat employer's greater experience with employment arbitration might allow it to be systematically better than a one-shot employee at selecting arbitrators more likely to rule in its favor. The repeat employer may observe tendencies in a particular arbitrator's handling of cases and decision-making processes that allow it to gain an advantage in how it presents future cases to that arbitrator. Although this would not suggest bias on the arbitrator's own part, it would nonetheless be problematic from a public policy perspective because it would suggest that the process of arbitrator selection in employment arbitration is allowing repeat employers to gain a systematic advantage over one-shot employees.

Previous research has generally supported the existence of a repeat employer effect when employers involved in multiple arbitration cases over a period of time tend to do better (Bingham 1997, 1998a, 1998b; Colvin 2008, 2011). Even advocates of employment arbitration who have discounted concerns of repeat player effect have tended to acknowledge repeat

player advantages resulting from greater size and more sophisticated internal grievance procedures. These internal grievance procedures may filter out stronger cases before they reach arbitration, resulting in a weaker pool of cases in arbitration that are less likely to be won by employees—a process often described as an appellate effect of grievance procedures (Eisenberg and Hill 2003; Hill 2003; Sherwyn et al. 2005). By contrast, the existence of a repeat employer-arbitrator pairing effect has been much more controversial in the literature. Early claims to have found such an effect (e.g., Bingham 1998a) have been subject to strong criticisms in the literature as being based on small samples and mis-specifying the proposed effect (Hill 2003; Sherwyn et al. 2005). However, recent research using larger samples and alternative specifications of the proposed effects provides support for the existence of a repeat employer-arbitrator pairing effect (Colvin 2011). In our analysis here, we build on that work by using a larger sample of arbitration cases over a longer time period, and we test the existence of a repeat employer–arbitration pairing effect using a continuous variable and a more elaborate model with more extensive control variables. We are also able to investigate and control for the effect of settlements as a case outcome.

Regional Variation

So far our focus has been on how variation in the characteristics and selection of arbitrators may affect outcomes. Another factor that may affect outcomes is variation in where arbitration occurs. Patterns of employment relations vary widely across the United States at the regional and state level. This is seen dramatically in union membership rates, which range from a low of 2.9% in North Carolina to a high of 23.2% in New York State (BLS 2013). This variation has distinct regional patterns, with unions tending to be weaker in the southern, prairie, and mountain states and stronger in the Northeast and Midwest and on the West Coast. Some of this relates to differences in culture, industrial structure, and economic history between these regions. However, the variations have also become embedded in the institutional structure of labor relations, most famously through the right-to-work laws that have been enacted in many southern and central states.

Should we expect similar variation in individual employment rights between regions and states? States do have the authority to enact employment laws, which can produce variation depending on the political and economic climate of the state. At the same time, federal employment statutes—such as Title VII, the Fair Labor Standards Act (FLSA), the Employee Retirement Income Security Act (ERISA), the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Family and Medical Leave Act (FMLA)—have national coverage and are designed to provide a universal floor of employment rights for employees across the country. Similarly, the Federal Arbitration Act (FAA) has been interpreted by the Supreme Court as reflecting a strong federal policy that preempts most efforts to regulate mandatory arbitration at the state level. What is

unclear is whether mandatory arbitration in practice reflects the idea of uniform national policy suggested by both the FAA and the federal employment statutes or if there is in practice more substantial variation at the state level is in practice more akin to what we observe in labor relations.

If mandatory arbitration varies at the state level, where would we expect to see it? The state that is often considered to provide the most employee-favorable employment law environment is California, which is known for having relatively extensive state-level employment laws that supplement the federal statutes.[1] Its state courts are considered favorable to employees, with a high rate of employee success in lawsuits and large damage awards (Oppenheimer 2003). In the specific area of arbitration law, California courts have been willing to require, to the degree that federal preemption doctrines allow, that arbitration agreements meet certain basic due process standards to be enforceable. By contrast, most of the southern states have generally been considered to have more employer-favorable state laws, courts, and legal environments. We will focus our analysis on Texas, which not only is the largest state by population after California but also has had an especially high number of mandatory arbitration cases. The status of California and Texas as exemplars of relatively employee-favorable and unfavorable states, respectively, is supported by Block and Roberts's (2000) index ranking of labor standards among American states and Canadian provinces, in which they rank California as having the 15th-highest labor standards out of the 63 jurisdictions and Texas as only the 57th-highest.

Data and Methods

The data used in this study were published by the American Arbitration Association in compliance with Section 1281.96 of the California Code of Civil Procedure, which mandates that private arbitration service providers publish select information on all consumer arbitrations they administer. These include employment cases in which the employees were required to accept a mandatory pre-dispute arbitration agreement drafted by their employer. Specifically, the California Code requires providers to publish such basic case information as the name of the employer, the name of the arbitrator, the prevailing party, the amount awarded, and whether the employee was self-represented. However, information regarding employee characteristics, types of claims being filed (e.g., FLSA, contract, Title VII), and the arbitrator's complete written award are not covered by these disclosure requirements. The American Arbitration Association, the nation's largest provider of employment arbitration services, publishes quarterly consumer arbitration reports (hereafter referred to as AAA C-filings) containing information on all consumer disputes it administers nationwide,

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[1]As the only state that has statutorily modified the employment-at-will rule, Montana would be the other logical candidate for most employee-favorable; however, its relatively small population size reduces its utility for comparisons.

pursuant to a broad interpretation of Section 1281.96. An additional advantage of this data source is that the AAA classifies employment arbitration it administers into two groups, what it refers to as promulgated and negotiated cases. Cases based on promulgated procedures, which is the AAA's preferred term for mandatory arbitration, are the only ones included in the set of cases disclosed under the AAA C-filings reports.[2] The result is that we have a data set that is composed specifically of cases based on mandatory arbitration procedures. This provides a comprehensive national set of data on all mandatory employment arbitration cases administered by the AAA. By virtue of its size and liberal disclosure policy, the AAA C-filings represent the best publicly available data set for analyzing disposition trends in employment arbitration. Covering claims from all 50 states, the data include 10,335 employment cases filed and terminated between January 1, 2003, and December 31, 2013. Of these 10,335 cases, 2,802 were adjudicated by an arbitrator, while the remaining were settled, withdrawn, or otherwise disposed of prior to the award stage. This data set does not include cases based on individually negotiated arbitration agreements, which are typically found in executive-level employee contracts and are less common and less controversial than the mandatory arbitration procedures that have been the main subject of public policy debates.

Descriptive statistics for the variables and simple binary analyses described below are shown in Table 1. Correlations between the variables are shown in Appendix Table A.1.

Dependent Variables

We analyze two dependent variables representing different aspects of an arbitrator's decision: employee win rates and award amounts. What constitutes an employee win in arbitration requires some judgment calls. Cases resulting in a monetary award or compensation of any kind are an employee win in the sense that employer liability is established. However, an employee might win on the question of liability but be awarded only a small proportion of the damages claimed. A narrower view of what constitutes an employee win might restrict it to those situations in which the employee recovered a larger proportion of the damages claimed. We take a broader view of what constitutes an employee win based on the criteria of a finding

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[2]In addition to cases based on individually negotiated arbitration agreements, typically found in executive contracts, another category of arbitration is voluntary or post-dispute cases in which the employee is choosing whether or not to go to arbitration after a dispute has arisen. Although the characteristics of voluntary cases are likely to be different from those of mandatory arbitration cases, we are confident that these cases are not represented in our data set. In a separate research project, Colvin and Pike (2014) conducted a detailed content analysis of the full case files for 217 AAA employment arbitration cases that were administered in 2008, which are a subset of the cases analyzed here. Among the promulgated procedure cases examined in that project, all were mandatory procedure cases and there were no voluntary cases included in that category; this category of promulgated procedure cases is used by the AAA as the criteria for cases included in the AAA C-filings reports that we use here.

Table 1. Plaintiff Win Rates and Award Amounts

| Category | Counts | | Employee win rate % | Award amount ($2013) (employee wins only) Mean (median) [S.D.] | Award amount ($2013) (all rulings) Mean [S.D.] |
	Settlements N (%)	Awards N (%)			
N	6,522	2,802	19.1	135,316 (48,670) [249,313]	25,929 [121,366]
Repeat employer (*repeat employer > 1*)	4,242 (65.0)*	1,902 (67.9)*	14.5**	144,110 (47,297) [284,543]	20,978** [119,725]
Non-repeat employer (*repeat employer = 1*)	2,280 (35.0)	900 (32.1)	28.8	125,944 (53,228) [205,376]	36,406 [124,187]
Repeat employer-arbitrator pairing (*emp.-arb. pairing > 1*)	1,605 (24.6)**	452 (16.1)**	10.8**	91,155 + (44,016) [139,536]	9,882** [53,639]
Non-repeat pairing (*emp.-arb. pairing = 1*)	4,917 (75.4)	2,350 (83.9)	20.7	139,536 (51,643) [257,474]	29,029 [130,238]
Self-represented	913 (14.0)**	897 (32.0)**	12.0**	81,357** (14,792) [267,764]	9,806** [96,302]
Attorney represented	5,609 (86.0)	1,905 (68.0)	22.4	148,963 (69,557) [242,861]	33,548 [130,894]
NAA member	805 (12.3)	362 (12.9)	12.2**	87,480 + (49,835) [110,905]	10,692** [47,922]
Non-NAA member	5,717 (87.7)	2,440 (87.1)	20.1	139,602 (48,550) [257,750]	28,185 [128,578]
Male arbitrator	4,605 (70.6)**	1,816 (64.8)**	20.6**	138,534 (50,930) [249,067]	28,657 [126,315]
Female arbitrator	1,917 (29.4)	986 (35.2)	16.3	127,839 (47,118) [250,501]	20,917 [111,591]
Former judge	829 (12.7)**	284 (10.1)**	22.9+	220,073** (93,584) [310,646]	50,369** [174,361]
Non-judge	5,693 (87.3)	2,518 (89.9)	18.7	123,594 (46,625) [237,633]	23,162 [113,539]
California	1,173 (18.0)**	200 (7.1)**	25.5**	143,920 (69,521) [225,789]	37,258+ [130,383]
Texas	970 (14.9)	420 (15.0)	16.4	160,106 (71,765) [233,478]	26,492 [111,619]
Other states	4,379 (67.1)	2,182 (77.9)	19.0	130,137 (47,118) [254,802]	24,796 [122,311]

Note: Within category differences significance levels: + $p < .10$; * $p < .05$; ** $p < .01$.

of liability. This will provide an upper-limit estimate of the employee win rate and a more conservative test of our arguments in the sense of being more likely to produce a positive indication of the prospects for employee success in arbitration. Thus, for the purpose of this study, an employee win (*employee win* = 1) is an adjudicated case in which the employee receives *any* form of monetary or nonmonetary relief. Conversely, an employee loss (*employee win* = 0) is attributed to cases in which an award provides no compensation for the employee. Award amounts were positive in 535 out of 2,802 awarded cases, producing an employee win rate of 19.1%. *Award amount* reflects the monetary amount, if any, awarded in a case in 2013 dollars. It is published by the AAA for all awarded cases. The mean and median amounts awarded to successful employee claimants are $135,316 and $48,670, respectively, indicating the distribution of award amounts is right-skewed with a minority of relatively large awards. The rightmost column of Table 1 presents the mean of award amount for all awarded cases, reflecting differences in both win rates and award amounts; that is, it includes in the calculation of the mean award those cases in which the employee lost the case and zero damages were awarded. It can be interpreted as the expected value of a case, taking into account both the chance of winning and the likely damages if successful. The mean award amount across all cases calculated this way is $25,929.

Expanding beyond previous research, in addition to monetary awards and win rates, we investigate the early disposition behavior of parties in arbitration. We focus particularly on settlement as a pre-hearing method of disposition because settlement behavior, for example, if the parties tend to settle particular types of cases before the arbitration hearing, may affect the types of cases that ultimately reach the award stage. Settlement is also of interest as an outcome in its own right and represents a primary mechanism by which an employee obtains some degree of financial compensation for a claim. The binary variable *settlement* is coded as 1 if a case was settled prior to an award and 0 if the case reached the adjudication stage. Of the 10,335 total cases filed and disposed of by the AAA in the 11-year period between 2003 and 2013, 63%, or 6,522, were settled. By comparison, 27%, or 2,802, reached the final adjudicatory stage in which awards were rendered, and 10%, or 1,011, were stayed, permanently stayed, withdrawn, or otherwise disposed of before an award was rendered.

Independent Variables—Claim Characteristics

Repeat employer is a continuous variable measuring the total number of instances an employer appears in our database. It is calculated using all disposition types (awarded, settled, dismissed, withdrawn, etc.), not just awards, as it is meant to measure employer size, sophistication, and familiarity with the arbitration procedure. Whereas some employers are involved in only a single case, most cases (66%) involved employers with multiple arbitration cases in our database, while 65 and 68% of settled and awarded cases,

respectively, involved repeat employers. Some employers have relatively extensive arbitration records; among employers with multiple cases in the data set the mean number of cases was 63, and the largest single employer was involved in 471 cases. *Repeat employer–arbitrator pairings* is a continuous variable as well; it is coded as 1 for the first instance an employer engages in a case with a particular arbitrator and increases by one unit with each subsequent interaction between the two parties. In the data set, 24.3% of all cases filed and 16.1% of all cases that ended in awards involved repeat employer-arbitrator pairs.

The variable *self-represented* indicates whether an employee was professionally represented (0) in arbitration or represented himself or herself pro se (1). A total of 2,179 cases filed, representing over 20% of all disputes, involved self-represented employees, while 897, or 32%, of awarded cases involved a self-represented employee plaintiff. The *California* and *Texas* binary variables capture the filing state of each case, based on data reported in the AAA C-filings. They are coded as 1 if a case was filed in the state of the variable's namesake and 0 otherwise.

Independent Variables—Arbitrator Characteristics

We ascertained the National Academy of Arbitrators membership status of arbitrators by referencing the roster maintained at the NAA's website. We found 182 employment arbitrators, responsible for 13% of all arbitrations conducted, who were also NAA members, corresponding to an *NAA member* code of 1.[3] The remaining 1,581 non-NAA member arbitrators were coded as 0. We should note that all members might not agree to be listed on the NAA website; however, the 658 unique names published constitute the large majority of members, and any missing names on the member list would bias the estimates of the effect downward, providing a more conservative test.

Next, we determined *male arbitrator* (1 = male, 0 = female) using arbitrator first names. When ruling on ambiguously gendered names, we assessed middle names and resolved any remaining uncertainty using an online search for the arbitrator. Thirty-one percent of hearings in the entire database and 35% of cases disposed of through an award were conducted under the auspices of a female arbitrator. This is an interesting contrast to the situation in labor arbitration, in which the proportion of female arbitrators has historically been much lower. *Former judge* was created based on the presence (1) or absence (0) of any of the following titles in arbitrator names: "Hon.," "Judge," "Honorable," and "Justice." Approximately 11% of the 1,763 unique arbitrators in the database had this indicator of judicial experience. This may miss some cases of former judges who no longer use these honorifics, but in most instances former judges use these titles, given the potential attractiveness of ex-judge status in the arbitrator selection process. Any

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[3]See National Academy of Arbitrators, accessed at http://naarb.org/member_list.asp (December 18, 2013).

missed former judges would also tend to bias estimates downward and provide a more conservative test of former judge effect.

Results

To begin, we discuss cases disposed of prior to an arbitrator's award. Thereafter, we will review the relationship between our independent variables and employee win rates and award amounts for cases terminated by an award.

To analyze the impact of simultaneous influences on settlement behavior and arbitration outcomes, we estimate regression models for settlement rates, employee win rates, and award amounts in Table 2. In Model 1, we use a logit regression model to analyze settlement behavior, since settlement is a dichotomous variable.[4] Model 2 similarly estimates a logit regression model for employee win rates, since it is also a dichotomous variable. Models 3 and 4 estimate negative binomial regression models for award amount.[5] Negative binomial regressions model the natural log of the dependent variable, thereby normalizing the distribution of award amount. In Model 3 we estimate a negative binomial regression for award amount constrained to cases determined to be employee wins. Next, in Model 4, we use a negative binomial regression for award amount from all cases ending in awards, even those in which zero damages were awarded (i.e., an employee loss). This fourth regression functions to model the expected value of a case, incorporating both an employee's chance of success and damages awarded. In each model, robust standard errors clustered around defendant employers are used.[6]

Model 1 tests the effects our independent variables have on the odds a case will settle prior to adjudication. The coefficients (β) reported in Model 1 imply that for every unit increase in an independent variable, the odds that a case will be settled or withdrawn will be multiplied by $e^{\wedge\beta}$. This transformation is presented as the odds ratio. For example, if a case involves a self-represented employee plaintiff, the odds a case will settle are multiplied by $e^{\wedge-0.982}= .375$. In other words, for every unit change in self-representation, the odds a case will settle prior to an award decreases by 62.5%.[7] This is statistically significant ($p < .001$). Other significant ($p < .001$) variables in Model 1 include male arbitrator and California. The odds of settling a case prior to adjudication increase by 26.9%[8] when the presiding arbitrator is male and by 159.2%[9] if the filing state is California. The lack of statistical significance

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[4]For a discussion of logit models, see Cramer (2003: chap. 9)

[5]For a discussion of negative binomial models, see Long (1997: chap. 8).

[6]For a discussion of robust standard errors, see White (1980). To determine whether clustered standard errors were appropriate, we ran the models using random effects and tested for serial autocorrelation and found no reason why clustered standard errors were not appropriate to produce unbiased standard errors.

[7]$(0.375 - 1) * 100 = -62.5\%$.

[8]$(1.269 - 1) * 100 = 26.9\%$.

[9]$(2.592 - 1) * 100 = 159.2\%$.

Table 2. Plaintiff Win and Award Amount Models

| Category	Model 1	Model 2	Model 3	Model 4
	Settlements *Logit* *[Odds ratio]*	*Plaintiff wins* *Logit* *[Odds ratio]*	*Award amounts* *(employee wins only)* *Negative binomial* *[Award ratio]*	*Award amounts* *(all cases)* *Negative binomial* *[Award Ratio]*
Repeat employer	−0.00019	−0.0031**	0. 00055	−0.0019+
(# of cases)	(0.00032)	(0.0014)	(0.00057)	(0.0011)
	[0.999]	[0.997]	[1.0006]	[0.998]
Repeat employer-arbitrator pair	0.026	−0.064*	−0.090**	−0.182***
	(0.037)	(0.032)	(0.031)	(0.030)
(# of cases)	[1.026]	[0.938]	[0.914]	[0.834]
Self-represented	−0.982***	−0.610***	−0.636*	−1.420***
	(0.091)	(0.128)	(0.322)	(0.298)
	[0.375]	[0.544]	[0.530]	[0.242]
NAA member	0.044	−0.561***	−0.444*	−1.069***
	(0.078)	(0.169)	(0.213)	(0.268)
	[1.045]	[0.568]	[0.641]	[0.343]
Male arbitrator	0.238***	0.176+	0.015	0.256
	(0.051)	(0.107)	(0.183)	(0.248)
	[1.269]	[1.192]	[1.014]	[1.291]
Former judge	0.073	0.051	0.546**	0.676*
	(0.080)	(0.160)	(0.208)	(0.338)
	[1.075]	[1.052]	[1.726]	[1.965]
California	0.952***	0.226	−0.052	−0.090
	(0.104)	(0.184)	(0.224)	(0.265)
	[2.592]	[1.253]	[0.949]	[0.914]
Texas	0.039	−0.290+	0.032	−0.232
	(0.085)	(0.151)	(0.189)	(0.250)
	[1.040]	[0.748]	[1.032]	[0.793]
Constant	0.742***	−1.049***	11.933***	10.671***
F [Chi-square]	359.45***	72.74***	30.84***	155.08***
Pseudo R^2	0.050	0.042		
N	9,321	2,802	535	2,802

Notes: Standard errors (in parentheses) clustered on employer. Introducing the independent variables as groups in a stepwise fashion did not produce additional insights. We also reran the analysis excluding the largest employers as a robustness check and found the results to be materially equivalent.
+$p < .10$; * $p < .05$; ** $p < .01$; *** $p < .001$.

for both our continuous repeat player measures is noteworthy and provides no evidence that these repeat players are more or less likely than one-shot employers to settle cases prior to the final adjudicatory stage.

The second model in Table 2 tests the effect arbitrator and claim characteristics have on the odds employees will win their case. For every unit change in repeat employer, the odds an employee will win his or her case decrease by 0.3%, an effect that is statistically significant ($p < 0.001$). To illustrate the practical significance of this effect, we show the predicted probabilities in Figure 1. When the value of repeat employer is 1, and the remaining independent variables are controlled for at their means, the

Figure 1. Predicted Probabilities and Award Amounts Using Marginal Means (with 95% Confidence Intervals)
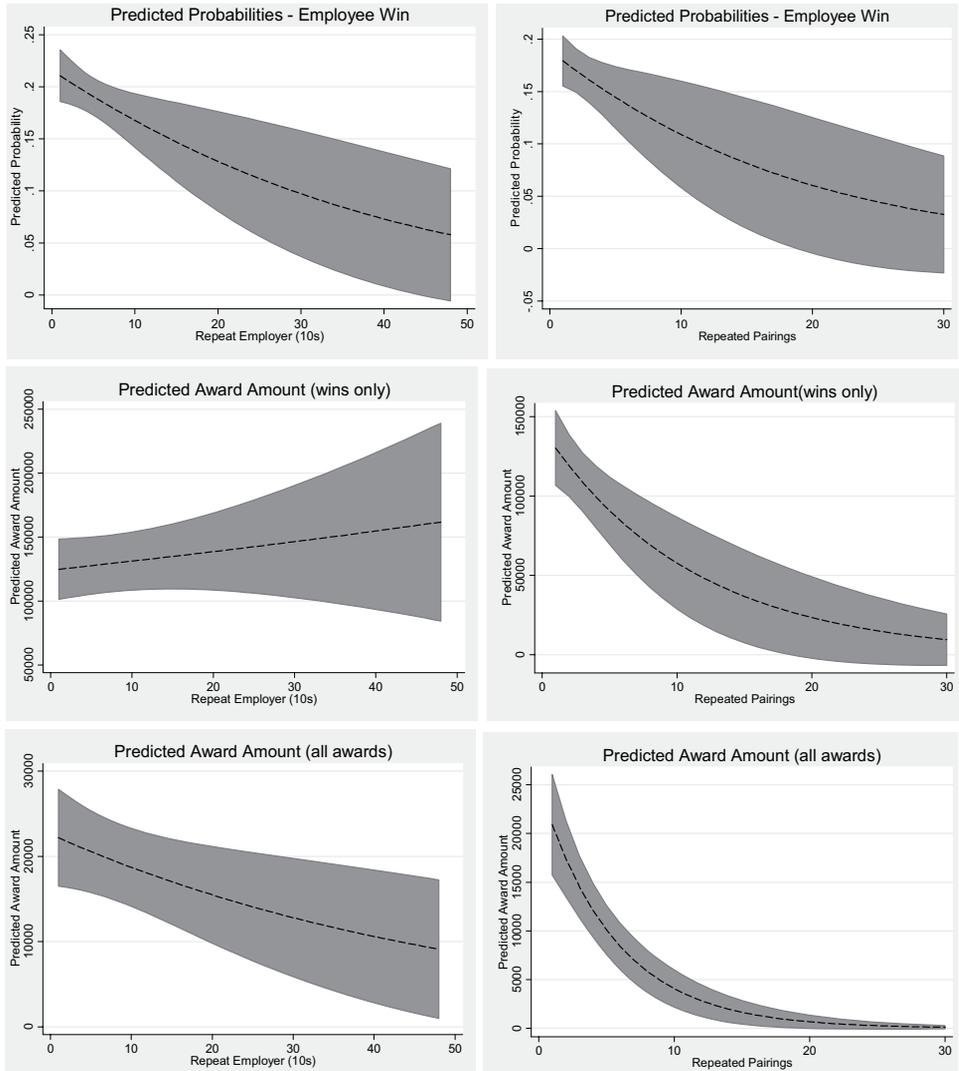
probability that an employee will win is 21%. If, however, we calculate the probability of an employee win with repeat employer at 63 (the mean value for awarded cases), the value decreases by 14.5% (or roughly three percentage points) to 18%. An odds ratio of 0.938 ($p < 0.05$) for repeat employer–arbitrator pairings suggests that, on average, each previous interaction between a given employer and an arbitrator decreases the odds of an employee's winning by 6.2%. Referring again to the predicted probabilities provided in Figure 1, we see that when all other independent variables are controlled at their means, the probability an employee will win his case when bringing it before a first-time employer-arbitrator pairing is 17.9%. If, however, a defending employer has had four previous interactions with a

given arbitrator, the probability an employee will win her case decreases to 15.3%, a 14.9% decrease. At 25 previous interactions between an employer-arbitrator pair, the probability of an employee win declines to 4.5%, a 75% decrease relative to first-time pairings.

Model 2 also shows that the odds of an employee win decrease by 45.6% when an employee is self-represented relative to employees having professional representation, a difference significant at the .001 level. Employee win rates have a marginally significant negative relationship ($p < 0.10$) with claims filed in Texas relative to claims filed in the remaining 49 states. With regard to arbitrator characteristics, if an arbitrator is a member of the NAA, there is a significant ($p < 0.001$) decrease of 43.2% in the odds an employee will win. This effect is in the opposite direction from our prediction of a higher employee win rate when the arbitrator is an NAA member. In addition, the odds of an employee win increase by 19.2% if the presiding arbitrator is male as opposed to female; however, this relationship is only marginally significant ($p < 0.10$). The remaining arbitrator characteristic measuring judicial experience was not found to have a significant effect.

Whereas regressions 1 and 2 model the log odds of an event, regressions 3 and 4 display the results of negative binomial regression models. To make the results more intuitive, we include the transformed coefficients (β) as award ratios. Additionally, using marginal mean scores, the predicted award amounts at various levels of our repeat player measures are presented in Figure 1. Model 3 measures the effects predictor variables have on award amounts, restricted to cases in which employees won. Of the claim characteristic variables, employer-arbitrator pairings and self-represented significantly ($p < 0.01$ and $p < 0.05$, respectively) affect the amount awarded to employees. For each unit increase in employer-arbitrator pairings—that is, for each additional case involving the same employer and arbitrator pairing—the size of a successful employee's monetary award decreases by 8.6%. Predicted award amounts are $130,184 for employees who win a case involving a first-time employer-arbitrator pair, $90,705 if the case involved a five-time employer-arbitrator pair, and $9,481 in cases involving an employer and arbitrator with 30 experiences together. And when self-represented employees receive damages, they can expect a 47% decrease in the size of their monetary award relative to that for an employee with representation. The data also indicate that arbitrators who are NAA members and those with experience as judges are associated with a 35.9% decrease and a 72.6% increase, respectively, in award amounts. Filing-state variables are not statistically significant in Model 3.

The fourth and final model in Table 2 includes all adjudicated cases, whether the plaintiff wins or loses. Consequently, it models the expected value to the plaintiff of a case that produces an award. Given a unit change in repeat employer, the average damages awarded in a case decrease by less than 1%, which is marginally statistically significant ($p < 0.10$). The effect of repeat employer-arbitrator pairings on the expected value of cases was negative in direction and statistically significant at the $p < 0.001$ level. For every

unit increase in employer-arbitrator pairings—that is, for each additional case involving the same employer and arbitrator pairing—the expected damages awarded in a case decline by 16.6%. The predicted award amount is $20,903 for a case involving a first-time pairing, $10,100 on the fifth employer-arbitrator pairing, and only $107 on the 30th pairing (Figure 1). Model 4 shows that damages awarded to self-represented employees are 75.8% less than those of their represented counterparts, a significant difference ($p < 0.001$). The model also suggests a significant association between awarded damages and NAA membership status ($p < 0.001$) and judicial experience ($p < 0.05$). Arbitrator members of the NAA, on average, award damages that are 65.7% smaller than amounts awarded by nonmembers. Finally, arbitrators with experience as judges award damages that are, on average, 96.5% greater than those awarded by arbitrators without experience on the bench.

To further investigate the relationships involved, we looked at interaction effects between self-representation and our repeat player measures on employee outcomes (Table 3). For the settlement rate, a significant ($p < 0.001$) negative coefficient for the interaction term between repeat employer-arbitrator pairings and self-representation shows that the effect of repeat employer-arbitrator pairings on propensity to settle is increasingly negative for self-represented employees by comparison with employees represented by lawyers. For employee win rates, a significant ($p < 0.05$) negative coefficient of the interaction term between repeat employer-arbitrator pairings and self-representation shows that the effect of repeat employer-arbitrator pairings on employee win rates is also increasingly negative for self-represented employees. With regard to award amounts, when employees receive an award in their favor, self-representation does not significantly moderate the relationship with repeat employer-arbitrator pairings; however, repeat employer is associated with a small decline in award amounts for those who represent themselves. With regard to the award amounts for all adjudicated cases (whether the employee wins or losses), the significant ($p < 0.05$) interaction terms between repeat employer-arbitrator pairings and self-representation again show that the negative effects of repeat employer-arbitrator pairings are increased for the self-represented. Overall, the results for the interaction terms indicate that the repeat player effects tend to increase in magnitude when the employee is self-represented.

Discussion

Our analysis provides strong evidence of a repeat player effect and, of more concern, of a repeat employer-arbitrator pair effect. Both repeat employers and repeat employer-arbitrator pairs are associated with lower employee win rates. Further, the average monetary amount awarded to successful plaintiffs is reduced in cases involving repeat employer arbitrator pairs and continues to decline with each subsequent pairing. The expected value of cases is further diminished in observations involving repeat employers and

Table 3. Interaction Effects

Variable	Model 1 Settlements Logit [Odds ratio]	Model 2 Plaintiff wins Logit [Odds ratio]	Model 3 Award amounts (employee wins only) Negative binomial [Award ratio]	Model 4 Award amounts (all cases) Negative binomial [Award ratio]
Repeat employer	−0.001	−0.003**	0.001**	−0.001
(# of cases)	(0.001)	(0.001)	(0.0006)	(0.001)
	[0.9995]	[0.997]	[1.001]	[0.999]
Repeat employer-arbitrator	0.059	−0.028	−0.091***	−0.134***
Pair	(0.044)	(0.032)	(0.030)	(0.035)
(# of cases)	[1.061]	[0.972]	[0.913]	[0.870]
Self-represented	−0.895***	−0.381**	−0.421	−0.595
	(0.037)	(0.114)	(0.302)	(0.246)
	[0.409]	[0.683]	[0.657]	[0.552]
Self-represented X repeat	0.001	12	−0.004**	−0.003+
employer	(0.001)	(0.001)	(0.001)	(0.001)
	[1.001]	[0.999]	[0.996]	[0.997]
Self-represented X repeat	−0.105***	−0.127**	−0.047	−0.445**
emp.-arb. pair	(0.022)	(0.056)	(0.166)	(0.141)
	[0.900]	[0.880]	[0.954]	[0.641]
Controls from Table 2 included in model but not reported				
Constant	2.05***	0.033***	145,390.10***	36,748.79***
F [*Chi-square*]	454.43***	74.05***	88.44***	288.05***
Pseudo R^2	0.051	0.043		
N	9,321	2,802	535	2,802

Notes: Standard errors (in parentheses) clustered on employer.
+$p < .10$; * $p < .05$; ** $p < .01$; *** $p < .001$.

repeat employer-arbitrator pairs. We also find that repeat employers and repeat employer-arbitrator pairings show no significant differences in settlement behaviors relative to their one-shot counterparts. This is important because differences in settlement behavior between the two groups could produce a selection effect in which stronger cases are more likely to be settled, producing a weaker set of cases that reach the hearing and award stage, which would in turn result in a depressed employee win rate. The lack of significant differences in settlement behaviors in our results enhances our confidence that the differences in employee win rates that we find between one-shot and repeat players is not simply a function of differences in settlement behaviors in the two groups. The presence of an interaction effect between self-representation and repeat employer-arbitrator pairings introduces additional nuance into our narrative—self-represented employees experience greater declines in settlement rates, in win rates, and in the expected value of their case when confronted with repeat pairs than do their counterparts with attorney representation. This suggests that lack of representation exacerbates the negative effects of repeat employer-arbitrator pairings.

Employees trying to vindicate their rights against repeat employers may experience lower win rates and award amounts because of arbitrator bias, but it strikes us as plausible that repeat employers accrue legitimate advantages by virtue of their larger size, greater resources, more sophisticated human resource policies, and experience, which could also explain these results. These alternative explanations hold less currency when interpreting the repeat employer-arbitrator pair results. Employers do better when there is a repeat employer-arbitrator pairing compared to a first-time encounter between the employer and the arbitrator. Even when we control for employer size and experience in arbitration, every additional interaction between an employer and an arbitrator who are involved in multiple cases together results in reduced employee outcomes as measured by win rates and monetary award amounts. One possible explanation for this relationship is that some arbitrators may be responding to economic incentives and issuing favorable awards to repeat clients. Here again, however, there are alternative explanations for the reported relationship. Past experience with an arbitrator may confer advantages that can be applied to subsequent hearings. For example, employers involved in repeat pairs may tailor their arguments to known arbitrator preferences. Although not arbitrator bias, this would still constitute an employer advantage afforded by the institutional structure of employment arbitration.

In labor arbitration, the opposing institutional force of unions inoculates arbitration against such advantages that systematically favor one side. Although plaintiffs' lawyers could theoretically fulfill a similar role in employment arbitration, our results suggest that as yet they do not have a sufficient presence to eliminate repeat employer-arbitrator pairing advantages from mandatory employment arbitration. Future studies should control for these varied explanations and explore how other institutions or plaintiffs' lawyers could more effectively reduce the repeat player advantages currently possessed by employers in mandatory employment arbitration.

Proponents of employment arbitration proclaim its accessibility, particularly for claimants unable to find representation in courts of law (Estreicher 2001). Our findings, however, show that employee self-representation in employment arbitration is associated with adverse impacts in terms of win rates and size of damages awarded to employees. Similar reduced success rates for the self-represented have been found in employment litigation (Nielsen, Nelson, and Lancaster 2010). We also found that repeat employer-arbitrator pairings had a greater negative impact on employee outcomes for self-represented employees than for those represented by counsel. What our results indicate is that in employment arbitration the self-represented do not fare as well as those with attorney representation and are more vulnerable to repeat player advantages favoring employers.

It should be cautioned that the data do not allow a standardized comparison of cases between those with attorneys and those with self-representation. Therefore, we do not know whether self-representation is the cause of lower win rates and award amounts or whether self-represented claims are

simply less meritorious. Alternatively, this relationship may be explained by self-represented employees' reluctance or inability to dispose of cases earlier in the arbitration process; the odds that an employee will settle prior to adjudication decreases by over 60% in cases involving a self-represented employee. This is consistent with early settlement behavior of pro se plaintiffs in litigation reported by Nielson et al. (2010), who found that pro se plaintiffs were significantly less likely to gain early settlements in employment discrimination cases in the federal courts. Although it would be a difficult task, future research should attempt to standardize case quality in comparisons to determine whether the differences identified in this study hold up when one controls for case merit.

Our results show moderate differences between states in early disposition behavior and win rates within mandatory arbitration. They confirm the popular assumption that California is a particularly employee-friendly state, where employers are more apt to settle cases before adjudication. What our results do not allow us to determine is the degree to which this is due to a more employee-friendly set of substantive employment laws in California, greater state court recognition of rights to due process in arbitration, or the skill of California plaintiffs' attorneys. Conversely, Texas appears to be a relatively employer-friendly state for mandatory arbitration when judged by the marginally significant lower employee success rates we find in that state. These findings indicate that mandatory arbitration does not operate as a uniform national institution but rather exhibits regional variation at the state level.

The results also indicate that variation in arbitrator characteristics, including NAA membership, judicial experience, and gender, is related to outcomes. This result raises potential concerns over the ability of sophisticated employers to exploit this variation to obtain more favorable outcomes. Parties in arbitration have direct influence over who decides their case, and if employers are more effective in using the selection process to their advantage, being forced into an arbitral forum will directly affect the resolution and determination of universally applicable substantive rights by employees. These results do not allow us to determine whether arbitrator characteristics are the cause of these differences or whether the types and merits of cases presented to certain types of arbitrators systematically differ. However, even if the findings are partly the result of channeling certain types of cases toward particular arbitrators, this ability to channel cases to preferred arbitrators may still provide a mechanism for a more sophisticated party, usually the employer, to gain an advantage in the arbitrator selection process.

One unexpected result is that NAA members are associated with employee-unfriendly outcomes. Coming from a collective bargaining environment in which labor arbitrators enforce standards that are tied to the actual and implied contract language, especially the just-cause standard for discipline and dismissal, we predicted that NAA members would apply relatively employee-favorable standards in employment arbitration. We found, however, that the employee win rate is lower if the arbitrator is an NAA

member, and monetary award amounts are lower as well. This may be because NAA member arbitrators are more skeptical of employment law-based claims than they are of the labor arbitration claims based on collective bargaining agreements that they more typically adjudicate. Alternatively, this result may be due to employers' tendency to select NAA member arbitrators in cases in which employees have weaker claims.

An arbitrator's history as a former judge is not associated with significant variation in settlements or win rates, but employee award amounts are higher when the arbitrator has judicial experience than when such experience is absent. This may be explained by systematic variation in cases presented before former judges, or they may be influenced by the larger awards characteristic of litigation and render similar-sized awards in arbitration. That award amounts are larger in litigation than in arbitration is well established in the literature (Colvin 2011; Gough 2014). Further, an employee's odds of settling a case are higher and the odds of winning a case are marginally higher when the arbitrator is male rather than female. This may be evidence that male arbitrators are more favorable to employees or may simply indicate that female arbitrators are selected for systematically different cases. The fact that cases are more likely to settle when there is a male arbitrator lends support to the latter explanation.

We recognize some limitations of our data. First, we should acknowledge that though we analyze 11 years of arbitrations, data truncation may raise concerns; ideally, we would want the full universe of cases disposed of in arbitration, especially when measuring repetition. Second, we investigate disposition data from a single arbitration provider, and there is no guarantee that the data found in AAA C-filings is representative of arbitrations generally. Future studies should include data from multiple arbitration providers to determine the generalizability of our results. Of particular concern is that ad hoc arbitration cases in which no administering agency enforces standard procedures may have very different characteristics and potentially more substantial due process defects. Third, the rudimentary reporting requirements found in Section 1281.96 of the California Code limit our ability to draw strong causal conclusions. Without specific case information, we cannot be certain that types or merits of cases and our predictor variables are independent. In addition, the data covered by the disclosure requirements do not include information on the cause of action, so we are unable to control for this aspect of cases. Research by Colvin and Pike (2014) and Gough (2014) suggests that the types of cases found in employment arbitration are relatively similar to those found in employment litigation, being predominantly employment discrimination, employment standards (wage and hour), and exceptions to employment-at-will cases. It would be valuable for future research, however, to be able to control for the effect that cause of action has on case outcomes. It would also be valuable to control for the existence or absence of internal conflict resolution procedures, which is also not included in the California disclosure requirements but may affect the types of cases that reach arbitration (Colvin 2003a:

Sherwyn et al. 2005; Eigen and Litwin 2014). Last, we employ just one of a multitude of potential measures for employer size, experience in arbitration, and past experience with a given arbitrator. Future studies could, for example, model employer experience in arbitration using data from multiple service providers.

Conclusion

The rise of mandatory arbitration represents the emergence of a major new institution for the governance of employment relations in the individual rights era. Alternative dispute resolution procedures such as arbitration and mediation are often viewed as relatively neutral technique-focused interventions in labor and employment relations. By contrast, we have sought to show how the institutional structure of these procedures is a key determinant of their operation and impact. Mandatory arbitration's endorsement by the U.S. Supreme Court was premised on the idea that it simply involved an alternative set of procedures for enforcing the same set of substantive rights. We have demonstrated how the outcomes of efforts to enforce substantive employment rights in fact vary widely depending on who the decision makers are and what the institutional context is. Justice in mandatory arbitration is not blind if parties are able to gain an advantage from selecting an arbitrator with desirable characteristics and especially if there are gains from doing repeat business with the same arbitrator.

Appendix

Table A.1. Correlation Table

Category	Repeat employer	Repeat employer-arbitrator pair	Self-represented	NAA member	Male arbitrator	Former judge	California	Texas
Repeat employer	1.0000							
Repeat employer-arbitrator pair	0.3161*	1.0000						
Self-represented	0.1796*	0.0208	1.0000					
NAA member	0.0224	0.1246*	−0.0008	1.0000				
Male arbitrator	−0.0630*	0.0063	−0.0403*	−0.1467*	1.0000			
Former judge	−0.0592*	−0.0490*	−0.0749*	−0.1369*	0.0899*	1.0000		
California	−0.1147*	−0.0701*	−0.1069*	−0.0467*	0.0022	0.0909*	1.0000	
Texas	0.0663*	0.1040*	−0.0388*	−0.0555*	0.0154	0.0841*	−0.1707*	1.0000

Notes: N = 2,802.
*indicates $p < .05$.

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