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No. 54705-4

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION I

MATTHEW SETO,
Appellant

v.

AMERICAN ELEVATOR, Inc.,
Respondent,

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

1. The trial court erred in granting defendant's motion to set aside plaintiff's request for trial de novo and in entering judgment on the award of arbitration in favor of defendant.
2. The trial court erred in entering a finding of fact that arbitrator Knowles served the parties with copies of the arbitration award and the certificate of mailing on the same date that he filed the award.
3. The trial court erred to the extent it found that plaintiff's request for a trial de novo was not filed and served until 21 days after service of the arbitration award.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether filing an arbitration award under MAR 6.2 is deemed ineffective until the arbitrator has served all parties with a copy of the award such that the twenty-day period for requesting a trial de novo under MAR 7.1(a) begins only upon such service. (Assignments of Error 1, 2, and 3)
2. Whether a request for trial de novo under MAR 7.1(a) is timely if filed and served within 20 days of the date upon which the arbitration award is served upon the party requesting trial de novo. (Assignments of Error 1, 2, and 3)

STATEMENT OF THE CASE

Procedural and Factual History

On April 27, 2004, the parties tried this matter in arbitration. On April 28, 2004, the arbitrator sent an e-mail message to counsel for both parties attaching an unsigned copy of an arbitration award (defense verdict) and an unsigned and undated certificate of mailing stating that a copy of the award had been mailed to counsel for both parties. CP 25. The text of the e-mail message stated that the award and certificate of mailing would be filed “no later than tomorrow (April 29, 2004).” CP 24. The e-mail did not specify whether the unsigned attached documents were drafts or final copies. *Id.* Also on April 28, 2004, the arbitrator signed the arbitration award and certificate of mailing and filed both documents with the court clerk. CP 11.

Counsel for plaintiff Matthew Seto received service of the award by U.S. mail on April 29, 2004, the precise date identified by the arbitrator in his April 28, 2004 e-mail as the probable filing date. CP 23. Neither the copy of the award nor the attached certificate of service served upon Mr. Seto on April 29, 2004 were conformed, bore a date stamp from the King County Superior Court, or otherwise indicated that the documents had been filed on April 28, 2004. CP 54-56. On May 19, 2004, within 20 days of service, Mr. Seto filed a Request for Trial De Novo. CP 1-3. Mr.

Seto served defendant American Elevator, Inc. with a copy of the Request for Trial De Novo on that date and filed a confirmation of service with the superior court. CP 3.

On May 21, 2004, American Elevator moved to set aside Mr. Seto's request for trial de novo on the basis that the request was untimely. CP 5-7. On the same date, the King County Superior Court Arbitration Department, citing MAR 7.1(a), filed a Notice of Waiver of Right to Trial De Novo. CP 4. Following briefing on the issue, the trial court issued an Order setting aside Mr. Seto's request for a trial de novo on June 4, 2004. CP 42-43. The trial court found that the arbitrator had filed and served the arbitration award and a proof of service on April 28, 2004 and that Mr. Seto had failed to file and serve his request for a trial de novo within 20 days of that date in accordance with MAR 7.1(a). *Id.*

SUMMARY OF ARGUMENT

By counting 20 days beginning with the filing of the arbitrator's award on April 28, 2004, the trial court determined that Mr. Seto's request for trial de novo had to be filed and served upon American Elevator by no later than May 18, 2004, the twentieth day after filing. Concluding it could not extend the 20-day period, the court denied Mr. Seto's request for trial de novo filed and served on May 19, 2004. Mr. Seto does not seek a

lengthening of the 20 days in which to file a request for trial de novo. Rather, he contends that the only sensible interpretation of the Mandatory Arbitration Rules is to start counting the 20-day period upon actual service of the award and to deem filing of the award ineffective until the date of service. Because the arbitrator served the award by placing a copy in the mail on April 28, 2004, the 20 days began to run on either (1) April 29, 2004, when Mr. Seto received actual service or (2) May 3, 2004, under the presumptive rules of CR 5(a)(2)(A) and CR 6(e). Mr. Seto's request for trial de novo, filed and served on May 19, 2004, was therefore timely.

ARGUMENT

1. Standard of Review

The interpretation of a court rule is a matter of law requiring de novo review. *Nevers v. Fireside*, 133 Wash.2d 804, 809, 947 P.2d 721 (1997).

2. The Trial Court Erred In Setting Aside plaintiff's Request for Trial De Novo and Entering Judgment for defendant Because Mr. Seto Timely Filed and Served His Request.

“RCW 7.06 authorizes mandatory arbitration of civil cases.”

Roberts v. Johnson, 137 Wash.2d 84, 88, 969 P.2d 446 (1999). RCW 7.06.030 authorizes promulgation of rules to govern mandatory arbitration procedures. *Id.* These Mandatory Arbitration Rules implement basic procedural requirements contained in RCW 7.06.050. *Id.* MAR 6.2 sets out the procedures the arbitrator must follow to notify the parties and the

court of the arbitration award following an arbitration hearing. MAR 6.2. MAR 7.1(a) sets out nearly identical procedures a party to the arbitration must follow to request a trial de novo before the superior court. MAR 7.1. MAR 6.3 permits the superior court to enter judgment only if the party seeking trial de novo has failed to comply with MAR 7.1(a). MAR 6.3.

A. The Plain Language of MAR 6.2 Requires the Arbitrator to Serve the Award Before the 20-Day Period for Requesting a Trial De Novo Begins.

MAR 6.2 requires the arbitrator to serve the parties with the arbitration award: “Within 14 days after conclusion of the arbitration hearing, the arbitrator shall file the award with the clerk of the superior court, *with proof of service of a copy on each party.*” MAR 6.2 (emphasis added). Similarly, MAR 7.1(a) requires a party requesting a trial de novo to serve all other parties with a copy of the request: “Within 20 days after the arbitration award is filed with the clerk, any aggrieved party not having waived the right to appeal may serve and file with the clerk a written request for trial de novo in the superior court *along with proof that a copy has been served upon all other parties* appearing in the case.” MAR 7.1(a) (emphasis added).

MAR 6.2 must be interpreted as though it was drafted by the Legislature using normal principles of statutory construction. *Nevers*, 133 Wash.2d at 809, 947 P.2d 721. “The primary objective of statutory

construction is to carry out the intent of the Legislature, which must be determined primarily from the language of the statute itself.” *Roberts*, 137 Wash.2d at 91-92, 969 P.2d 446 (citing *Department of Transp. v. State Employees’ Ins. Bd.*, 97 Wash.2d 454, 458, 645 P.2d 1076 (1982)). The language of MAR 6.2 evinces a strong intent that service is required; it only fails to state precisely *when* service must occur. To find otherwise - that the Rule imposes only a perfunctory filing duty on the arbitrator - would require an overly literal reading of the Rule that would render the inclusion of the words “proof of service” a nullity. These words plainly require the completed act of service rather than a mere statement of intent to serve or a statement that service has been attempted. Under MAR 6.2, the act of filing a certificate of mailing, absent completed service, is insufficient. The language of the Rule itself “leads logically to a conclusion” that actual service is required to start the 20-day period for requesting a trial de novo. *Nevers*, 133 Wash.2d at 811, 947 P.2d 721.

Furthermore, the Washington State Supreme Court has previously declined to interpret the nearly identical language requiring service in MAR 6.2 and 7.1 “to have different meanings and to require different acts.” *Roberts*, 137 Wash.2d at 91, 969 P.2d 446. “[T]he requirement of MAR 6.2 – that the arbitration award be filed ‘with proof of service’ – is no more ambiguous than the mandate of MAR 7.1(a) - that the request for

trial de novo be filed ‘along with’ proof of service.’” *Id.* Although the *Roberts* court analyzed the language of the two rules solely in the context of an arbitrator’s failure to file proof of service, *see id.* at 88-93, the conclusions therein are applicable to an arbitrator’s failure to serve the award altogether. Under MAR 6.2, the act of filing the award is expressly deemed ineffective absent the secondary act of filing proof of service. MAR 6.2. In observing that the requirements of MAR 6.2 and MAR 7.1(a) are identical, the *Roberts* court adds, unsurprisingly, that the act of filing is similarly ineffective absent actual service of the award.

California courts, applying basic principles of statutory construction, have similarly declined to interpret a mandatory arbitration rule, nearly identical on its face to MAR 6.2, as imposing a mere filing requirement on the arbitrator and requiring less than actual service on the parties to the arbitration. *Domingo v. Los Angeles County Metro. Transp. Auth.*, 74 Cal.App.4th 550, 553, 88 Cal.Rptr.2d 224 (1999) (interpreting Cal. Rules of Court, Rule 1615(b) which states “[w]ithin 10 days after the conclusion of the arbitration hearing the arbitrator shall file the award with the clerk, with proof of service on each party to the arbitration ...”).¹ *See also Oats v. Oats*, 148 Cal.App.3d 416, 421, 196 Cal.Rptr. 20 (1983)

¹ The California rules also include a rule nearly identical to MAR 7.1(a): “Within 30 days after the arbitration award is filed with the clerk of the court, a party may request a trial by filing with the clerk a request for trial, with proof of service of a copy upon all other parties appearing in the case ...” California Rules of Court, Rule 1616(a).

(finding that the language of Rule 1615 “evinces a recognition that service is as essential” in an arbitration as in any other proceeding).

In *Domingo*, the arbitrator filed the award with proof of service in compliance with the California Rule. *Domingo* 74 Cal.App.4th at 553, 88 Cal.Rptr.2d 224. Like the arbitrator in this case, the arbitrator in *Domingo* then attempted to mail a copy of the award to the defendant’s attorneys. *Id.* Due to a typographical error, the award was mailed to an incorrect address. *Id.* The arbitrator tried unsuccessfully several times to mail the award to the attorneys’ former address. *Id.* Ultimately the defendant was not served with the award until more than 30 days had elapsed since the date on which the arbitrator had filed the award *and the proof of service*. *Id.* After finally receiving actual notice of the award, the defendant immediately requested a trial de novo. *Id.* The trial court denied the request because 30 days had passed since filing. *Id.*

The appellate court reversed the order denying the request for a trial de novo finding that “[the California equivalent of MAR 6.2] obligates the arbitrator to serve the parties,” even though the rule states only a filing obligation. *Id.* The court noted that “the only sensible application of the mandatory arbitration rules was to start counting [the time period] for filing a request for a trial de novo after the award was served.” *Id.* at 554 (citing *Oats* 148 Cal.App.3d at 421, 196 Cal.Rptr. 20.

Mr. Seto asks that the court construe MAR 6.2 in a similarly “sensible” manner. The facts of *Domingo* illustrate the absurdity of any other construction. While filing is a necessary step in perfecting the award, “proof of service,” without *actual* service, proves nothing at all. Furthermore, the act of filing and indeed the award itself is a nullity until the parties are served with actual notice of the award. *Oats* 148 Cal.App.3d at 420-21, 196 Cal.Rptr. 20 (citing *Rusnak v. General Controls Co.*, 183 Cal.App.2d 583, 585, 7 Cal.Rptr. 71 (1960)). The language of Mar 6.2 plainly requires service upon the parties and until this requirement is satisfied, the filing of the award and proof of service must be deemed ineffective.

B. Mr. Seto’s Request for Trial De Novo Was Timely Because He Did Not Have Actual Notice until April 29.

MAR 6.3 prevents a court from entering judgment until the 20-day period for filing a request for trial de novo expires. MAR 6.3. The 20-day period begins to run only upon service of the arbitration award. MAR 6.2; MAR 7.1. Similarly, a requesting party’s failure to comply with MAR 7.1 prevents a court from conducting a trial de novo. *Nevers*, 133 Wash.2d at 811-12, 947 P.2d 721. Washington courts have interpreted these Mandatory Arbitration Rules as imposing an almost jurisdictional limitation on the court’s power to act further in an arbitration proceeding.

See Nevers, 133 Wash.2d at 812 n.4, 947 P.2d 721 (noting that filing and serving a request for a trial de novo is “somewhat akin” to filing an appeal).² The quasi-judicial function of MAR 6.2 thus renders provision of actual notice of the award essential. Absent proper notice of the award, the superior court is powerless to act.

For purposes of the Mandatory Arbitration Rules, a party is deemed to have actual notice only when properly served in strict compliance with CR 5. *Nevers*, 133 Wash.2d at 810 n.3, 947 P.2d 721; MAR 1.3 (b)(2) (providing for purposes of the mandatory arbitration rules “all pleadings and other papers shall be served in accordance with CR 5”). Absent such compliance, actual notice is irrelevant. Thus, the arbitrator’s April 28, 2004 e-mail fails as notice of the award. CR 5 does not permit service by e-mail and neither Mr. Seto nor his counsel previously agreed to accept service via e-mail or via any means not expressly provided for in CR 5. Furthermore, the documents attached to the e-mail were unsigned and did not conform to the documents filed the same day.

Even if actual notice in lieu of service were sufficient under the Rules, the e-mail must fail because it is ambiguous and misleading.

² Technically, jurisdiction is not at issue. “The superior court’s jurisdiction is invoked upon the filing of the underlying lawsuit and it is not lost merely because the dispute is transferred to mandatory arbitration.” *Nevers*, 133 Wash.2d at 812 n.4, 947 P.2d 721. *Cf. Oats*, 148 Cal.App.3d at 420, 196 Cal.Rptr. 20 (finding “actual service is as essential to confer upon the [trial] court jurisdiction to act further in an arbitration proceeding as in any other proceeding”).

Regardless of when the arbitrator reached his decision, the fact of the award remained a nullity until it was both served and filed. *Oats* 148 Cal.App.3d at 420-21, 196 Cal.Rptr. 20. To constitute notice, the e-mail would have had to include, at a minimum, the precise service and filing dates of the award. It did neither. The e-mail stated that the award would be filed “*no later than tomorrow (April 29, 2004).*” CP 24. It thus alluded to two possible dates for filing, expressly denoting the later of those dates. The arbitrator served Mr. Seto with an unconformed copy of the award on the later (denoted) date but, without further notice to Mr. Seto, filed the award on the earlier date.

While the deception was not deliberate, the fact remains that the arbitrator twice provided Mr. Seto with documents stating or implying that the award was both served and filed on April 29. At no time did the arbitrator or the court specifically inform Mr. Seto that filing had in fact occurred on April 28. Notably, because of the fact that the documents served on April 29 were unconformed, they did not affirmatively state or otherwise indicate that April 28 was the filing date. Only by checking the court file could Mr. Seto have only known that that the notice provided him was deceptive.

Mr. Seto would have been better off with no “notice” at all. The arbitrator was no doubt trying to do the parties a service by advising them

of his decision at the earliest possible instance. Unfortunately, this act created a procedural quagmire for Mr. Seto, depriving him of substantial rights. Mr. Seto's right to a trial de novo should not be determined by the arbitrator's mistake, whether, as here, the result of good intentions or, as in *Domingo*, the result of inattentiveness. Because the concept of notice is fundamental, Mr. Seto's right to a trial de novo should instead be determined solely by the date upon which he was properly served with notice of the award.

Mr. Seto was not in fact properly served with the award until April 29, 2004 and thus had until May 19, 2004 to file and serve a request for a trial de novo. Alternatively, because the arbitrator mailed the documents on April 28, 2004, under the presumptive rules of CR 5(b)(2)(A) and CR 6(e), Mr. Seto is not deemed to have been served with the award until May 3, 2004 and thus had until May 23, 2004 to file and serve his request.³ In any event, the award was not properly served until April 29, 2004 at the earliest. Mr. Seto therefore did not have notice of the award until that date and his request for a trial de novo filed and served on May 19, 2004 was timely made under MAR 7.1(a).

³ The timing rules of CR 5 and CR 6 apply to the Mandatory Arbitration Rules. MAR 1.3(b)(2); (b)(3). Strict compliance with these rules is mandatory. *Nevers*, 133 Wash.2d at 810 n.3, 947 P.2d 721. These rules delay the date of service by three court days when, as here, service is made by mail. *See* CR 5(b)(2)(A) (stating service deemed complete upon third day following day of mailing); CR 6(e) (adding three days when a party required to do some act or take some proceedings is served by mail).

C. Requiring Actual Service of the Award Will Further the Rules' Mandate to Reduce Congestion in the Courts.

The primary goal of the Mandatory Arbitration Rules is to “reduce congestion in the courts and delays in hearing civil cases.” *Nevers*, 133 Wash.2d at 815, 947 P.2d 721 (citing *Perkins Coie v. Williams*, 84 Wash.App. 733, 737, 929 P.2d 1215 (1997)). The fact that this matter is before an appellate court immediately suggests a benefit of requiring the arbitrator to serve the award before the twenty-day period begins to run.

The parties to an arbitration ought to be able to rely on the arbitrator to serve the award. *Domingo*, 74 Cal.App.4th at 554, 88 Cal.Rptr.2d 224. They should also be able to rely on the plain language of the Mandatory Arbitration Rules and the Civil Rules. If the parties cannot rely on the arbitrator and the Rules, the only way they can protect themselves from the expiration of the 20-day period is to repeatedly examine the court file for an unannounced filing. *Id.* Such examinations would be unnecessarily burdensome for the court clerk and the parties. *Id.* The better construction of the Rules is one that places the burden on the arbitrator to properly serve the award and allows the parties to reasonably construe the Rules according to their plain meaning. *Id.*

The apparent utility of the filing date as a means for reducing court congestion is illusory. The filing date insures the parties will act promptly

only so long as the arbitrator satisfies the obligation to serve the award and the parties therefore have notice that they are required to act. As the *Domingo* court found, not every filing of a “proof of service” proves that the party was served. That court reached the obvious conclusion that “judicial efficiency” would actually be increased by requiring service and starting the period for requesting trial de novo only after such service. *Id.*

The only way that Mr. Seto could have known that the award was filed on April 28 was to check the court file. He should not have had to do so, especially when he had in hand (1) an unconfirmed copy of the award stating the date of service as April 29, 2004 and (2) a correspondence from the arbitrator expressly indicating the likely date of filing as April 29, 2004. If less congestion and fewer delays are the goal of requiring arbitration of civil matters, then MAR 6.2 must be interpreted so as to impose the minimal burden on the arbitrator of properly serving the parties and coordinating the date of service with the date of filing.

CONCLUSION

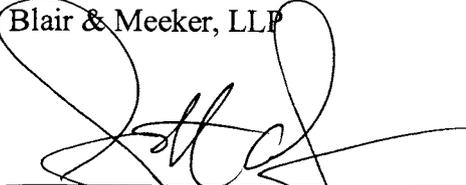
The lower court erred when it granted American Elevator’s motion to set aside Mr. Seto’s request for a trial de novo and entered judgment for American Elevator. The language of MAR 6.2 plainly requires the arbitrator to serve Mr. Seto with a copy of the award. Mr. Seto is entitled

to notice of the award before the 20-day period for requesting a trial de novo begins to run. Moreover, MAR 6.2 must be interpreted so as to further the mandate to reduce congestion in the courts.

For all of the above reasons, Mr. Seto respectfully requests that this Court reverse the lower Court and grant his request for trial de novo.

DATED this 4TH day of OCTOBER, 2004.

Blair & Meeker, LLP



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APPENDIX

Supreme Court of Washington,
En Banc.

Cory B. NEVERS and Steve Anderson, Respondents,
v.
FIRESIDE, INC., a Washington State licensed
corporation, Petitioner.

No. 64678-3.

Argued June 11, 1997.
Decided Dec. 4, 1997.

Parties in arbitration proceeding timely filed request for trial de novo, but did not serve request until 20th day after filing of arbitration award. The Superior Court, King County, Anne Ellington, J., terminated review below, and appeal was taken. The Court of Appeals, 82 Wash.App. 441, 918 P.2d. 194, reversed, and appeal was taken. The Supreme Court, Alexander, J., held that parties who failed to serve copies of request for trial de novo within 20 days of filing of arbitration award and failed to file proof of service within that period were not entitled to trial de novo.

Reversed and remanded.

West Headnotes

[1] Arbitration  **4.1**
33k4.1 Most Cited Cases

Superior Court Mandatory Arbitration Rules (MAR), like all other court rules, are interpreted as though they were drafted by the legislature, and as such, Supreme Court construes them in accord with their purpose.

[2] Appeal and Error  **893(1)**
30k893(1) Most Cited Cases

Just as construction of statute is matter of law requiring de novo review, so is interpretation of court rule.

[3] Arbitration  **73.7(4)**
33k73.7(4) Most Cited Cases

Copies of request for trial de novo must be served within 20 days of filing of arbitration award, and proof of that service must be filed within that same

period; it is only when there has been timely service and filing of proof of that service that court may conduct trial de novo. MAR 7.1(a).

[4] Arbitration  **73.7(4)**
33k73.7(4) Most Cited Cases

Timely filing of request for trial de novo of arbitrator's decision in court ordered arbitration is necessary for superior court to conduct trial de novo. MAR 7.1(a).

[5] Arbitration  **4.1**
33k4.1 Most Cited Cases

Primary goal of statutes providing for mandatory arbitration and Mandatory Arbitration Rules that are designed to implement statutes is to reduce congestion in courts and delays in hearing civil cases. West's RCWA 7.06.010 et seq.

[6] Arbitration  **73.7(4)**
33k73.7(4) Most Cited Cases

Parties who failed to serve copies of request for trial de novo within 20 days of filing of arbitration award and failed to file proof of service within that period were not entitled to trial de novo. MAR 7.1(a).
****722 *806** Lund & Williams, P.S., by David P. Williams, Kirkland, for Petitioner.

Paul, H. King, Seattle, for Respondents.

ALEXANDER, Justice.

Fireside, Inc. obtained review of a decision by Division One of the Court of Appeals in which that court reversed the King County Superior Court's denial of a request by the respondents, Cory Nevers and Steven Anderson, for a trial de novo of a civil action that had previously been transferred to mandatory arbitration. The primary issue before us is whether it is fatal to Nevers and Anderson's request for a trial de novo that they failed to file proof, within 20 days of the date an arbitration award in favor of Fireside was filed, that they had served Fireside with a copy of the request. We conclude that it is and, consequently, reverse the Court of Appeals and reinstate the superior court's order denying the respondents' request for trial de novo.

The facts of this case are essentially undisputed. Nevers and Anderson brought suit in King County

Superior Court against Fireside for back wages, including liquidated damages, totaling \$25,905.82. Pursuant to RCW 7.06.020(1), the suit was transferred by the superior court to mandatory arbitration. [FN1] The court's Mandatory Arbitration *807 Department then scheduled an arbitration hearing for January 28, 1994. On that day, Fireside appeared and raised several jurisdictional issues which the arbitrator felt required briefing by both parties. The arbitrator, therefore, continued the arbitration hearing and requested that both parties submit briefing on the issues raised by Fireside no later than 10 days prior to the date of the reconvened arbitration hearing.

FN1. RCW 7.06.020(1) states in pertinent part:

"(1) All civil actions, except for appeals from municipal or district courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of fifteen thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to thirty-five thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration."

In a letter to attorneys for both parties dated March 11, 1994, the arbitrator requested that they each submit a brief by the end of that month addressing what the arbitrator described as the "severe jurisdictional issues" that Fireside had raised on January 28. Clerk's Papers (CP) at 19. The arbitrator stated:

Following my rulings, we will set an arbitration date if one is still necessary.... Given the posture of this case, *the submission of briefs will be mandatory in order to keep this case going.... If the Plaintiffs [Nevers and Anderson] wish to keep their case alive, they must submit a brief. ...*

CP at 10 (emphasis added). Fireside submitted a brief, but Nevers and Anderson did not. Consequently, on April 4, 1994, the arbitrator entered an award in favor of Fireside, stating that the award was based, in part, on the fact that Nevers and Anderson "failed to submit briefs on these jurisdictional issues as required by the arbitrator." CP at 9. The arbitration award was filed with the King County Superior Court on April 5, 1994.

Twenty days later, on April 25, 1994, Nevers and Anderson filed a request with the King County Superior Court for a trial de novo. That filing was not, however, accompanied by proof that they had served Fireside with a copy of the request for trial de novo. On that same date, Nevers and Anderson filed a "Motion for Reinstatement of *808 Plaintiffs' Right to Trial De Novo...." CP at 12-16. In support of their motion, they indicated that they did not receive the arbitrator's letter of March 11 requiring submission of briefs, and thus did not "intentionally" fail to participate in the arbitration proceeding. CP at 15.

On April 26, 1994, the King County Arbitration Director filed a "Notice of Waiver of Right to Trial De Novo" with the superior court. CP at 71. It stated that Nevers and Anderson had waived their right to a trial de novo by "failing to participate in the arbitration hearing held before Ervin Desmet [arbitrator]." CP at 71.

Thereafter, the King County Superior Court entered an order denying Nevers and **723 Anderson's motion to reinstate their right to trial de novo. In doing so, the trial court indicated that even if counsel for Nevers and Anderson did not receive the arbitrator's March 11 letter, "the issue ultimately is whether the request for trial de novo was timely filed and served." CP at 111. It resolved that issue by concluding that "neither service nor filing was accomplished within the twenty days following the arbitrator's ruling...." CP at 111. [FN2]

FN2. The disparity between the date the award was signed (April 4, 1994) and the date it was filed (April 5, 1994) apparently contributed to the trial court's initial conclusion that the request for trial de novo was filed one day late.

Nevers and Anderson then sought reconsideration of the superior court's denial of their motion for reinstatement of right to trial de novo. The superior court denied their motion for reconsideration concluding in pertinent part that:

1. The request for trial de novo was filed timely on April 25, given the corrected date for the filing of the award (April 5).
2. Service of the request was not accomplished. No proof of service is on file to date.
3. Plaintiffs indicate the failure to file earlier was the result of advice of the Clerk and Arbitration staff. Assuming such advice was given as described, it was contrary to the rules *809 and to

case law. The Court has substantial doubt that whatever remarks were actually made were properly understood. However, the request for trial de novo was still timely filed; no explanation exists for failure to serve by that date.

4. The rule requires both service and filing to be accomplished by the twentieth day; compliance with the rules is "jurisdictional" in the sense that the court is without authority to extend the deadline.

CP at 142 (citations omitted).

Nevers and Anderson appealed the superior court's decision to Division One of the Court of Appeals. That court reversed the superior court. We, thereafter, granted Fireside's petition for discretionary review. Fireside's contention on appeal is that the superior court correctly denied Nevers and Anderson's motion to reinstate their right to a trial de novo on the basis that Nevers and Anderson failed to timely file proof with the superior court that they had served Fireside with a copy of their request for a trial de novo.

[1][2] The mandatory arbitration of civil actions is provided for in chapter 7.06 RCW. RCW 7.06.030 indicates that the procedures to implement the mandatory arbitration of civil actions are as provided in rules adopted by the Supreme Court. Those rules, which are known as the Superior Court Mandatory Arbitration Rules (MAR), like all other court rules, are interpreted as though they were drafted by the Legislature. As such, we construe them in accord with their purpose. State v. Wittenbarger, 124 Wash.2d 467, 484, 880 P.2d 517 (1994) (citing PUD 1 v. WPPSS, 104 Wash.2d 353, 369, 705 P.2d 1195 (1985)). Furthermore, just as the construction of a statute is a matter of law requiring de novo review, so is the interpretation of a court rule. See Westberg v. All-Purpose Structures, Inc., 86 Wash.App. 405, 409, 936 P.2d 1175 (1997).

A party to an arbitration award who is "aggrieved" may request a trial de novo in superior court by serving and filing with the clerk of the superior court, within 20 *810 days after the arbitration award is filed, a written request for a trial de novo "along with proof that a copy has been served upon all other parties appearing in the case." MAR 7.1(a) (emphasis added). As noted above, Nevers and Anderson filed their request for a trial de novo within 20 days of the date the arbitration award was filed. They did not, however, accompany that filing with proof that they had served Fireside with a copy of the request. Indeed, there is no indication in the record

that proof of such service has ever been filed with the superior court. The most that can be said is that on the twentieth day after the arbitrator's award was filed with the clerk of the superior court, counsel for Nevers and Anderson mailed copies of their request for a trial de novo and their motion to reinstate their right to trial de novo to **724 Fireside's counsel. We are satisfied that even if proof of such a mailing had been filed with the clerk of the superior court on April 25, 1995, it would not have constituted "proof" that Nevers and Anderson served Fireside with a copy of their request for a trial de novo within the 20-day time limit set forth in MAR 7.1. [FN3]

FN3. According to MAR 1.3(b)(2), all pleadings and other papers should be served in accordance with CR 5. CR 5(b)(2)(A), which governs service by mail, indicates that such service is not deemed complete until the third day after mailing. See also Jankelson v. Lynn Constr., Inc., 72 Wash.App. 232, 236, 864 P.2d 9 (1993) ("A party may comply with the rule's [MAR 7.1(a)] service deadline by mail; provided that where service has been made by mail, the proof of service states that the mailing was made no less than 3 days before the 20-day deadline.").

Nevers and Anderson basically concede that they did not strictly comply with MAR 7.1. They suggest, rather, that by depositing a copy of their request for a trial de novo in the mail on April 25, 1994, they were in substantial compliance with the rule. Fireside responds that there must be strict compliance with the filing requirements of MAR 7.1(a). It argues, alternatively, that even if substantial compliance with the rule is sufficient, Nevers and Anderson did not substantially comply with the rule because Fireside's counsel did not receive actual notice of their request for a trial de novo within 20 days of the date *811 the arbitrator's award was filed with the clerk of the superior court.

[3] As we have observed, MAR 7.1(a) indicates that in order for an aggrieved party to obtain a trial de novo, that party must, within 20 days of the date the arbitration award is filed with the superior court, file a written request for a trial de novo "along with proof" that a copy of the written request has been served on all parties appearing in the case. Although the rule does not specifically say when copies of the request are to be served, the fact that the rule requires that proof of service be filed along with the request

for trial de novo leads logically to a conclusion that copies of the request must be served on the parties to the arbitration within 20 days of the date the award is filed with the superior court.

The issue before us is whether the MAR 7.1(a) requirement that proof of service be filed within 20 days of the date the arbitration award is filed is mandatory and thus a condition precedent to obtaining a trial de novo. If it is, failure to strictly comply with that requirement is fatal to a request for trial de novo and the superior court's authority is limited to entering a judgment upon the arbitrator's decision and award. RCW 7.06.050; MAR 6.3. If, on the other hand, the requirement is not a condition that must be timely met in order for the superior court to conduct a trial de novo, sanctions other than dismissal may be imposed for failure to observe the dictates of the rule. See, e.g., State v. Ashbaugh, 90 Wash.2d 432, 583 P.2d 1206 (1978); Schmitt v. Matthews, 12 Wash.App. 654, 531 P.2d 309 (1975).

[4] We are of the view that timely filing of a request for trial de novo of an arbitrator's decision in court ordered arbitration is necessary for the superior court to conduct a trial de novo. In that regard we are in accord with the Court of Appeals in State v. Hofer, 86 Wash.App. 497, 942 P.2d 979 (1997) to the effect that failure to strictly comply with MAR 7.1(a)'s filing requirement prevents the *812 superior court from conducting a trial de novo. [FN4] It follows, we believe, that the requirement in MAR 7.1(a) that proof of service of copies of the request for trial de novo be filed is also a prerequisite to obtaining a trial de novo. Our conclusion in that regard is dictated by the provisions of MAR 7.1, which make it clear that while one must timely file a request in order to obtain a trial de novo, mere filing of the request is not, by itself, sufficient. The request must, according to that rule, be filed "along with" proof **725 that a copy of it was served on all parties to the case. We agree with Fireside that it is only when there has been timely service and filing of proof of that service, that the court may conduct a trial de novo. Both steps must be taken, and on this the rule is unambiguous. See In re Stoker, 118 Wash.2d 782, 792, 827 P.2d 986 (1992) (when interpreting a court rule, the court gives effect to the ordinary meaning of the rule's language).

[FN4] The court in Hofer concluded that it was necessary to comply with the "basic step" of timely filing the request for trial de novo in order to invoke the superior court's jurisdiction. Hofer, 86 Wash.App. at 500,

942 P.2d 979. Although we recognize the filing of the request and proof of service with the superior court is somewhat akin to filing a notice of appeal, it is not a step that invokes the superior court's jurisdiction. That court's jurisdiction is invoked upon the filing of the underlying lawsuit and it is not lost merely because the dispute is transferred to mandatory arbitration.

If we were to conclude that it is not necessary to timely file proof of service of the request for trial de novo in order to obtain a trial de novo in superior court, we would in essence be extending the time within which to request a trial de novo. This we cannot do because we would be contradicting the additional language in MAR 7.1(a) that "[t]he 20-day period within which to request a trial de novo may not be extended." Furthermore, we would be flying in the face of MAR 6.3 which indicates that the prevailing party in an arbitration may present a final judgment "[i]f within 20 days after the award is filed no party has sought a trial de novo under rule 7.1." See also Pybas v. Paolino, 73 Wash.App. 393, 400 n. 3, 869 P.2d 427 (1994) ("whether strict compliance is required, except in exceptional circumstances, depends on the nature of the *813 words of command or direction in light of policy considerations") (citing State v. Ashbaugh, 90 Wash.2d 432, 583 P.2d 1206 (1978)).

We are not unmindful of the fact that our holding here is contrary in part to decisions from two Divisions of the Court of Appeals. See O'Neill v. Jacobs, 77 Wash.App. 366, 890 P.2d 1092 (1995) (Division Two); Hoirup v. Empire Airways, Inc., 69 Wash.App. 479, 848 P.2d 1337 (1993) (Division One). In both cases, the request for trial de novo had been timely filed but the copy of the request was not served within 20 days of the date the arbitration award was filed. Those courts concluded that the filing of proof that all parties appearing in the case had been served with a copy of the request for trial de novo was a mere procedural requirement which could be satisfied by substantial compliance. O'Neill, 77 Wash.App. at 372, 890 P.2d 1092; Hoirup, 69 Wash.App. at 483, 848 P.2d 1337. In reaching its decision here, the Court of Appeals relied on Hoirup and concluded that Nevers and Anderson substantially complied with the requirements of MAR 7.1 because there was "service of the request for trial de novo on the twentieth day" and Fireside "makes no claim of prejudice." [FN5] Nevers v. Fireside, Inc., 82 Wash.App. 441, 446, 918 P.2d 194 (1996), review granted, 131 Wash.2d 1008, 932 P.2d

1255 (1997).

FN5. This conclusion is not borne out by the record, Fireside stated in a memorandum to the superior court that prejudice to it had been "real and substantial." CP at 169. Furthermore, the conclusion that Nevers and Anderson served their request on the twentieth day is not borne out by the record which indicates that counsel for Nevers and Anderson mailed a copy of the request on the twentieth day after the award was filed. As we indicate in footnote three, *supra*, service by mail is not deemed complete until three days after the date of the mailing.

We believe that the aforementioned decisions of the Court of Appeals fail to appreciate that the requirement that an aggrieved party timely file its request for trial de novo is linked to the requirement that there be a filing of proof of timely service of the request. One act, in short, is not complete without the other. That, as we have observed above, is made manifest by the clear language of *814MAR 7.1(a) to the effect that the request for a trial de novo be filed "along with" proof of service.

We find ourselves in accord with the reasoning of Division Two of the Court of Appeals in Jankelson v. Lynn Constr., Inc., 72 Wash.App. 232, 864 P.2d 9 (1993), a case that preceded O'Neill. In that case, in which the facts were almost identical to those here, the court indicated that MAR 7.1 is not ambiguous and "contemplates that service will have been completed within the 20 days allowed for making the request." Jankelson, 72 Wash.App. at 234, 864 P.2d 9. [FN6] Although the court in Jankelson was primarily concerned with the aggrieved party's failure to serve **726 the nonmoving party within 20 days of the date the arbitration award was filed and did not specifically address that party's failure to file proof of service, it did state "[a] party complies with the rule's [MAR 7.1(a)] filing deadline by filing the request with the clerk, together with proof of service of the request on the opposing party within 20 days of the arbitration award." Jankelson, 72 Wash.App. at 236, 864 P.2d 9.

FN6. In O'Neill, Division Two of the Court of Appeals distinguished its previous holding in Jankelson, on the ground that, unlike the nonmoving party in Jankelson, the nonmoving party in O'Neill received

actual notice. O'Neill, 77 Wash.App. at 372, 890 P.2d 1092.

Our decision here is also consistent with our recent opinion in Schaefco, Inc. v. Columbia River Gorge Comm'n, 121 Wash.2d 366, 849 P.2d 1225 (1993). There, we addressed the effect of a party's failure to timely file a motion for reconsideration under CR 59(b), [FN7] stating that a motion for reconsideration "is timely only where a party both files and serves the motion within 10 days." Schaefco, 121 Wash.2d at 367, 849 P.2d 1225. Although that case dealt with another rule, it is analogous because MAR 7.1(a) and CR 59(b) each require that filing and service take place within a given period of time. Nevers and Anderson suggest that our decision in Schaefco is not analogous, pointing out that the *815 disposition of the case was governed by RAP 18.8. While that is true, that fact operates against their argument that there may be substantial compliance with MAR 7.1(a). That is so because RAP 18.8 is more liberal than MAR 7.1(a) in terms of excusing compliance in that it allows an extension of time limits in extraordinary circumstances. On the other hand, as we have observed, MAR 7.1(a) forbids the extension of the 20 day time limit. See also City of Seattle v. Public Employment Relations Comm'n, 116 Wash.2d 923, 929, 809 P.2d 1377 (1991) (stating "[s]ervice after the time limit cannot be considered to have been actual service within the time limit").

FN7. CR 59(b) states, in pertinent part, "[a] motion for a new trial or for reconsideration shall be served and filed not later than 10 days after the entry of the judgment."

[5] Although our ruling is dictated by the plain language of MAR 7.1, we observe that requiring strict compliance with the filing requirements set forth in the rule better effectuates the Legislature's intent in enacting the statutes providing for mandatory arbitration of certain civil cases. The primary goal of the statutes providing for mandatory arbitration (RCW 7.06) and the Mandatory Arbitration Rules that are designed to implement that chapter is to "reduce congestion in the courts and delays in hearing civil cases." Perkins Coie v. Williams, 84 Wash.App. 733, 737, 929 P.2d 1215, review denied, 132 Wash.2d 1013, 940 P.2d 654 (1997) (emphasis added); see Christie-Lambert Van & Storage Co. v. McLeod, 39 Wash.App. 298, 302, 693 P.2d 161 (1984) (citing Senate Journal, 46th Legislature (1979), at 1016-17). Were we to conclude

that the specific requirement of MAR 7.1 that copies of a request for trial de novo be served within 20 days of the filing of the arbitration award and that proof of that service be filed within that same period may be satisfied by substantial compliance, we would be subverting the Legislature's intent by contributing, inevitably, to increased delays in arbitration proceedings.

[6] In light of that fact that Nevers and Anderson failed to serve copies of the request for trial de novo on Fireside within 20 days, much less file proof of service within that period, we can only conclude that the superior court correctly declined to conduct a trial de novo. Therefore, we *816 hold that the trial court correctly denied their request for a trial de novo as well as their motion to reinstate their right to a trial de novo. Consequently, we need not address Nevers and Anderson's argument that they substantially complied with the filing of proof of service requirement of MAR 7.1(a).

The decision of the Court of Appeals is reversed and the case remanded for reinstatement of the King County Superior Court's order denying Nevers and Anderson's request for a trial de novo.

DURHAM, C.J., and DOLLIVER, SMITH, GUY, JOHNSON, MADSEN, TALMADGE and SANDERS, JJ., concur.

Supreme Court of Washington,
En Banc.

Ronald A. ROBERTS, as assignee, Respondent,
v.

DeMay C. JOHNSON, Petitioner.
Cynthia Nary, Appellant,
v.

Marcelle E. Hoey and John Doe Hoey, wife and
husband, Respondents.

Nos. 66529-0, 66694-6.

Argued Oct. 21, 1998.
Decided Jan. 7, 1999.

Party to mandatory civil arbitration, for which proof of service of arbitration award was not filed, requested trial de novo. The Superior Court, Pierce County, Terry D. Sebring, J., dismissed request as untimely, and petition for review was filed. The Court of Appeals affirmed in an unpublished opinion, and review was granted. In unrelated mandatory arbitration, for which proof of service of award was also not filed, the Superior Court, Pierce County, Karen L. Strombom, J., granted motion to vacate judgment, which was entered after request for trial was dismissed for failure to file proof of service of request, based on arbitrator's failure to file proof of service of award, and appeal was taken. After consolidating appeals, the Supreme Court, Dolliver, J., held, as an apparent matter of first impression, that: (1) filing an arbitration award is not complete until and unless accompanied by proof of service of the award, and (2) 20-day period in which an aggrieved party must request a trial de novo does not commence running until filing is perfected in this way.

Affirmed in part, reversed in part.

West Headnotes

[1] Arbitration  **49.1**
33k49.1 Most Cited Cases

Filing of mandatory arbitration award is not complete until and unless accompanied by proof of service of the award; strict compliance with proof of service requirement is required when filing award. West's RCWA 7.06.010 et seq.; MAR 6.2.

[2] Statutes  **181(1)**
361k181(1) Most Cited Cases

[2] Statutes  **188**
361k188 Most Cited Cases

Primary objective of statutory construction is to carry out intent of Legislature, which must be determined primarily from language of statute itself.

[3] Statutes  **190**
361k190 Most Cited Cases

Where language of statute is plain and unambiguous, meaning should be discovered from wording of statute itself.

[4] Courts  **85(2)**
106k85(2) Most Cited Cases

Rules of court should generally be construed in same manner as statutes.

[5] Arbitration  **73.5**
33k73.5 Most Cited Cases

Twenty day period in which aggrieved party must request trial de novo from mandatory arbitration does not commence running until filing of arbitration award is perfected; both award and proof of service must be filed for period to begin. West's RCWA 7.06.010 et seq.; MAR 6.2.

****446 *85** Maltman, Reed, North, Ahrens & Malnati, Michael T. Schein, Seattle, for Petitioner.

Law Offices of Charles J. Brocato, Charles James Brocato, Gig Harbor, for Appellant.

Robert G. Casey, Vernon Harkins, Harold Dodge, Tacoma, for Respondents.

***86 DOLLIVER, J.**

DeMay Johnson petitioned for review of a Court of Appeals decision affirming the dismissal of her request for a trial de novo following an arbitration award. In a direct appeal, Cynthia Nary sought review of a trial court order vacating a judgment on an arbitration award. We granted the petition for review and retained the direct appeal, consolidating the cases for oral argument.

In *Roberts v. Johnson*, the law firm of Eisenhower

and Carlson sued DeMay Johnson, a former client, for legal fees. The matter proceeded to mandatory arbitration and was heard on October 16, 1995. Ronald Roberts, as assignee of Eisenhower and Carlson, prevailed. The arbitrator filed the **447 award in Pierce County Superior Court on October 18, 1995, but, contrary to MAR 6.2, did not include with the filing proof of service of a copy of the award on each party. Johnson's attorney received a copy of the award on October 19, 1995, but that copy did not bear a date stamp indicating it had been filed with the Clerk of the Pierce County Superior Court. The Clerk's Papers do not indicate proof of service of the arbitration award has ever been filed.

On November 7, 1995, 20 days after the arbitration award was filed, and in keeping with MAR 7.1, Johnson filed a request for a trial de novo. That same day, she hired a legal messenger to serve a copy of her request on Roberts, but the messenger did not deliver the copy to Roberts until the next day, November 8, 1995. Because Johnson failed to comply with the requirement of MAR 7.1(a) that both the request for a trial de novo and proof of service be filed within 20 days of the filing of the award, Roberts moved to dismiss the request. The superior court granted the motion and entered judgment on the arbitration award.

Division Two of the Court of Appeals affirmed in an unpublished *87 decision. *Roberts v. Johnson*, No. 20266-2-II, 1998 WL 19449 (Wash.Ct.App. Jan. 16, 1998). The court rejected Johnson's argument that the 20-day period for filing a request for a trial de novo was tolled because of the arbitrator's failure to file proof of service of the award. We granted review of that decision.

It was brought to our attention on the eve of oral argument that DeMay Johnson died in December 1997. Her son, Christopher J. Johnson, filed a motion requesting that he be substituted as Petitioner. With the exception of the attorney fees which led to this lawsuit, Mr. Johnson has paid all of the expenses associated with the case and its appeal, including posting \$18,000 to obtain a letter of credit, in lieu of a supersedeas bond, for a stay of the judgment. As there is no personal representative, we agree Mr. Johnson should be substituted as Petitioner and grant the motion. See RAP 3.2.

In *Nary v. Hoey*, Cynthia Nary received an arbitration award in a dog bite case. On March 20, 1996, the arbitrator filed the award in Pierce County Superior Court. As in the *Roberts* case, the arbitrator failed to file proof of service of the award

on the parties. On April 8, 1996, the Defendant, Marcelle Hoey, filed a request for a trial de novo but failed to comply with MAR 7.1(a) by also filing proof of service of the request. Nary moved to dismiss the request and asked that a judgment on arbitration award be entered. The trial court granted Nary's motion and entered judgment on the award.

Defendant Hoey then moved to vacate the judgment, claiming it was void because the arbitrator failed to file proof of service on the parties when filing the arbitration award. The trial court granted the motion, directing the arbitrator to file proof of service of the award within 14 days of the court's order. The trial court specifically found the 20-day period within which to request a trial de novo "did not commence" due to the arbitrator's failure to file proof of service of the award. Clerk's Papers at 69. We retained Nary's direct appeal. Proof of service of the *88 arbitration award has since been filed, and Hoey has filed another request for trial de novo.

At issue in both cases is whether an arbitrator's failure to file proof of service of a mandatory arbitration award tolls the 20-day period for filing a request for a trial de novo.

RCW 7.06 authorizes mandatory arbitration of civil cases. RCW 7.06.030 states:

The supreme court shall by rule adopt procedures to implement mandatory arbitration of civil actions under this chapter.

The statute itself also specifies some requirements. RCW 7.06.050 provides:

Following a hearing as prescribed by court rule, the arbitrator shall file his decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded. If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment **448 shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions.

The Mandatory Arbitration Rules (MAR) implement the statute. MAR 6.2 reads, in relevant part:

Within 14 days after the conclusion of the arbitration hearing, the arbitrator shall file the

award with the clerk of the superior court, with proof of service of a copy on each party.

The arbitrator may apply for an extension of time, but late filing "shall not invalidate the award." MAR 6.2. "Within 20 days after the arbitration award is filed with the clerk," an aggrieved party may file in court "a written request for a trial de novo in the superior court along with proof that a *89 copy has been served upon all other parties appearing in the case." MAR 7.1(a). If within 20 days after the award is filed no party has sought a trial de novo, then the prevailing party shall present to the court a judgment on the award of arbitration. A judgment so entered is the final judgment, which is not subject to appellate review and can only be set aside by a motion to vacate under CR 60. MAR 6.3.

In Nevers v. Fireside, Inc., 133 Wash.2d 804, 947 P.2d 721 (1997), a party filed a request for a trial de novo within the requisite 20-day period, but failed to accompany the request with proof of service, as required by MAR 7.1(a). We held the proof of service requirement is mandatory and must be obeyed in order to obtain a trial de novo. Justice Alexander, writing for a unanimous court, stated:

[T]he requirement in MAR 7.1(a) that proof of service of copies of the request for trial de novo be filed is also a prerequisite to obtaining a trial de novo. Our conclusion in that regard is dictated by the provisions of MAR 7.1, which make it clear that while one must timely file a request in order to obtain a trial de novo, mere filing of the request is not, by itself, sufficient. The request must, according to that rule, be filed "along with" proof that a copy of it was served on all parties to the case. ... Both steps must be taken, and on this the rule is unambiguous....

....

[T]he requirement that an aggrieved party timely file its request for trial de novo is linked to the requirement that there be a filing of proof of timely service of the request. One act, in short, is not complete without the other.

Nevers, 133 Wash.2d at 812-13, 947 P.2d 721.

We held our ruling was "dictated by the plain language" of the court rule but also observed that requiring strict compliance with the filing requirement effectuated the Legislature's intent, which was to reduce court congestion and delays in hearing civil cases. Nevers, 133 Wash.2d at 815, 947 P.2d 721.

*90 Because they involve MAR 6.2, rather than MAR 7.1, these cases are not necessarily controlled by Nevers. However, our reasoning in Nevers is

applicable here. MAR 6.2, like MAR 7.1(a), requires the filing to include proof of service. MAR 6.2 states within 14 days after conclusion of an arbitration hearing, "the arbitrator shall file the award with the clerk of the superior court, with proof of service of a copy on each party." To obtain a trial de novo, MAR 7.1(a) requires that, within 20 days after the arbitration award is filed, an aggrieved party must "serve and file with the clerk a written request for a trial de novo in the superior court along with proof that a copy has been served upon all other parties appearing in the case."

[1] As applied in these cases, the Nevers rationale mandates strict compliance with the proof of service requirement when filing an award. Under the plain, unambiguous language of the rule, the two are linked; "[o]ne act, in short, is not complete without the other." Nevers, 133 Wash.2d at 813, 947 P.2d 721.

Roberts does not cite Nevers v. Fireside, Inc., which was decided after the Court of Appeals ruled in his favor. Nary, however, argues substantial compliance with MAR 6.2, a procedural rule, is sufficient where a party receives actual notice of the filing of an arbitration award. However, we specifically rejected the argument that substantial compliance **449 with the filing requirement of MAR 7.1(a) was sufficient. Allowing substantial rather than strict compliance with the filing requirement in MAR 7.1(a) would subvert the intent of the Legislature by contributing to increased delays in arbitration proceedings. Nevers, 133 Wash.2d at 815, 947 P.2d 721.

Nary argues requiring strict compliance with MAR 6.2, on the other hand, would result in delays, because even a party who had been properly served with an arbitration award could "sit and wait until the opposing party presented a judgment and then argue that the 20 days had not yet run and, in essence, extend the 20 day period an additional 20 days." Br. of Appellant at 7. This argument is *91 not persuasive. It assumes a party requesting a trial de novo desires delay. It is just as likely that a party requesting a trial de novo would want to accelerate the process.

More importantly, the requirement of MAR 6.2--that the arbitration award be filed "with proof of service"--is no more ambiguous than the mandate of MAR 7.1(a)--that the request for trial de novo be filed "along with" proof of service. In addition, RCW 7.06.050 states that an arbitration award must be filed "together with proof of service thereof on the parties." Nary's argument is not compelling because it is based on a flawed assumption; it also fails

because it requires us to hold the drafters of the Mandatory Arbitration Rules intended virtually the same language, albeit in different rules, to have different meanings and to require different acts. We decline to do so and instead follow Nevers.

Both Johnson and Hoey argue that failure to file proof of service tolls the commencement of the 20-day period for filing a request for a trial de novo. The Court of Appeals rejected this argument in Roberts v. Johnson, holding the 20-day period begins to run "the date the arbitration award is filed with the clerk." Slip op. at 4. In other words, filing the award itself invoked the 20-day time period even if proof of service was not filed. Having determined Nevers controls, however, the filing of one document (the award) is not complete without filing of the other (proof of service). Again, RCW 7.06.050 requires the arbitration award to be filed "together with" proof of service, and states the 20-day period begins upon "such filing." This language suggests "such filing" includes the filing of both the award and the proof of service. The logical result, then, is that the 20-day time limit did not begin to run in these cases because the arbitrators did not "file" their awards.

[2][3][4] Rules of statutory construction require the same result. The primary objective of statutory construction is to carry out the intent of the Legislature, which must be determined primarily from the language of the statute itself. *92Department of Transp. v. State Employees' Ins. Bd., 97 Wash.2d 454, 458, 645 P.2d 1076 (1982). Where the language of the statute is plain and unambiguous, the meaning should be discovered from the wording of the statute itself. POWER v. Utilities & Transp. Comm'n., 101 Wash.2d 425, 429, 679 P.2d 922 (1984). Rules of court should generally be construed in the same manner as statutes. State v. McIntyre, 92 Wash.2d 620, 622, 600 P.2d 1009 (1979). The language of the statute is clear: the "such filing" from which the time to request trial de novo runs is the filing of the "decision and award ... together with proof of service thereof on the parties." See Perkins Coie v. Williams, 84 Wash.App. 733, 738, 929 P.2d 1215, review denied, 132 Wash.2d 1013, 940 P.2d 654 (1997) (holding "clear language" of RCW 7.06.050 dictates result).

[5] Because we hold the 20-day period begins to run only when both the award and proof of service thereof have been filed, we find the Court of Appeals wrongly affirmed the dismissal of Johnson's request for a trial de novo. The arbitrator has yet to file proof of service of the award in the court file, which means Johnson's request for a trial de novo was not

untimely.

By the same token, the trial court correctly vacated the judgment to allow Hoey to file a request for a trial de novo. Since that decision, the arbitrator has filed proof of service of the award and Hoey has filed a timely request for a trial de novo. If, under MAR 7.1(a), she has also filed a timely proof ****450** of service of that request, then she should be allowed to proceed with her trial de novo.

Nary argues, "a party discovering that an arbitrator did not file proof of service could move to set aside a judgment on arbitration award years after the judgment was entered and request a trial de novo." Reply Br. of Appellant at 3. We disagree. It is true that, under CR 60(b)(5), a court may vacate a void judgment at any time. A judgment is void if entered by a court without jurisdiction. In re Marriage of Ortiz, 108 Wash.2d 643, 649, 740 P.2d 843 (1987). As we stated in Nevers, however, the superior court's "jurisdiction is invoked upon the filing of the underlying lawsuit *93 and it is not lost merely because the dispute is transferred to mandatory arbitration." Nevers, 133 Wash.2d at 812 n. 4, 947 P.2d 721.

As the issue in these cases is not jurisdictional, then, it seems to us the proper vehicle for seeking relief from judgment is a motion brought under CR 60(b)(1) (due to mistake, inadvertence, surprise, excusable neglect or irregularity). Such motions must be made within one year after the judgment is entered.

In conclusion, we hold the reasoning of Nevers v. Fireside, Inc. applies when construing MAR 6.2, and filing an arbitration award is not complete until and unless accompanied by proof of service of the award. The 20-day period in which an aggrieved party must request a trial de novo does not commence running until filing is perfected in this way. We therefore reverse the Court of Appeals, holding the arbitrator's failure to file proof of service of the award tolled the 20-day time limit, so Johnson's request for a trial de novo was not untimely. We affirm the decision of the trial court in Nary v. Hoey.

DURHAM, C.J., and SMITH, GUY, JOHNSON, MADSEN, ALEXANDER, TALMADGE and SANDERS, JJ., concur.

Court of Appeal, Second District, Division 5,
California.

Hermin DOMINGO, Plaintiff and Respondent,
v.
LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY, Defendant and
Appellant.

No. B126199.

Aug. 24, 1999.

Bus passenger brought suit against county transportation authority to recover for injuries sustained while riding on bus. After case was ordered to judicial arbitration, which resulted in award in favor of passenger, authority filed request for trial de novo, which was rejected as untimely. Authority moved to set aside award and ensuing judgment, and the Superior Court, Los Angeles County, No. BC178742, Sherman W. Smith, Jr., J., denied motion. Authority appealed, and the Court of Appeal, Godoy Perez, J., held that because authority was never properly served with arbitration award, 30-day period for seeking trial de novo began when it received actual notice of award.

Reversed and remanded.

West Headnotes

[1] Arbitration  73.5
33k73.5 Most Cited Cases

Period of 30 days during which defendant could seek trial de novo after entry of arbitration award in plaintiff's favor began to run when defendant received actual notice of award, rather than on date award was filed, where defendant was never properly served with award due to typographical error by arbitrator which prevented delivery of copy of award mailed to defendant's counsel. West's Ann.Cal.C.C.P. § 1141.20(a); Cal.Rules of Court, Rules 1615, 1616.

[2] Arbitration  73.5
33k73.5 Most Cited Cases

In absence of proper service of arbitration award, 30-day period during which party may request trial de novo begins when party receives actual notice of award. West's Ann.Cal.C.C.P. § 1141.20(a); Cal.Rules of Court, Rules 1615, 1616.

[3] Arbitration  54
33k54 Most Cited Cases

Before a court can enter an arbitrator's award as its judgment, the parties must have notice of the award.

[4] Arbitration  54
33k54 Most Cited Cases

Rules of Court impose on the arbitrator, and not the parties, burden of filing and serving the arbitration award. Cal.Rules of Court, Rule 1615.

****225 *551** Shan K. Théver & Associates, Shan K. Thever and Donald G. Forgey, Los Angeles; Greines, Martin, Stein & Richland LLP, Martin Stein and Carolyn Oill, Beverly Hills, for Defendant and Appellant.

Stanley Z. White & Associates and Stanley Z. White, Beverly Hills, for Plaintiff and Respondent.

GODOY PEREZ, J.

Appellant Los Angeles County Metropolitan Transportation Authority appeals from denial of its request for trial de novo ***552** following court-ordered judicial arbitration. After review, we reverse and remand.

PROCEDURAL AND FACTUAL BACKGROUND

In July 1996 respondent Hermin Domingo sued appellant Los Angeles County Metropolitan Transportation Authority for personal injuries she allegedly suffered while riding one of appellant's buses. In March 1998, the court ordered the case to judicial arbitration. As the parties awaited their arbitration date, appellant's attorneys moved their offices from 221 North Figueroa Street, Los Angeles, to 865 South Figueroa Street, Los Angeles.

The arbitration hearing took place on June 17, 1998, and on June 24, 1998, the arbitrator awarded respondent \$50,000. The arbitrator served his award that day and filed it with the court the following day, but due to a typographical error, the arbitrator mailed appellant's copy of the award to 8655 South Figueroa, Los Angeles, instead of the correct address at 865 South Figueroa, Los Angeles. The post office returned the misaddressed envelope to the arbitrator, who, instead of correcting his typographical error,

remained the award to appellant's attorneys at their former address at 221 North Figueroa Street, Los Angeles.

In the months following their office move, appellant's attorneys periodically contacted their former landlord to see if any mail had been delivered to their old address. On Friday, July 24, 1998, they learned the arbitration award had been received that day at their old offices and immediately retrieved it. The award now in hand, appellant served a request for trial de novo the following Monday, July 27, 1998, and attempted to file the request with the court the next day. The clerk of the court rejected the request as untimely, however, because more than 30 days had passed since the arbitrator's award had been filed, causing it to be entered as the court's judgment earlier that day. (Code Civ. Proc., § 1141.20, subd. (a) ["An arbitration award shall be final unless a request for a de novo trial is filed within 30 days after the arbitrator files the award with the court."]; Cal. Rules of Court, rule 1616(a) [request for trial de novo must be filed within 30 days of the award].) [FN1]

[FN1. All further rule references are to the California Rules of Court.

Appellant moved to set aside the arbitrator's award and ensuing judgment, arguing relief was proper because it had not been properly served with the award. In support, appellant submitted the arbitrator's declaration admitting his typographical error in addressing the award the first time and confessing to having sent the award the second time to the old address for appellant's *553 attorneys. Respondent opposed the motion, claiming appellant's attorneys had breached their (supposed) duty to ascertain the arbitrator's decision by either contacting the court or the arbitrator after the customary 10 days for issuing an arbitration award had passed.

After hearing, the court denied appellant's motion. Apparently reasoning that the 30 days for requesting trial de novo began upon the filing of the arbitrator's award on June 25, 1998, the court concluded it had no authority to extend appellant's **226 time to file a request for trial de novo past Monday, July 27, 1998 (the first court day after the 30 days expired). It stated, "The denial is based upon the California Supreme Court [[FN2]] holding in (*Karamzai v. Digitcom* (1996) 51 Cal.App.4th 547, 551 [59 Cal.Rptr.2d 139]) ... 'We conclude that a trial court

has no authority to alter the time in which a party must file a request for a de novo trial.' (*Id.* at p. 551 [59 Cal.Rptr.2d 139].)" This appeal followed.

[FN2. The court misidentified our Supreme Court as having decided *Karamzai v. Digitcom* (1996) 51 Cal.App.4th 547, 59 Cal.Rptr.2d 139. In fact, the decision was ours. In that case, we held a trial court could not shorten the time in which a party can file a request for trial de novo.

DISCUSSION

[1] By counting 30 days beginning with the filing of the arbitrator's award on June 25, 1998, the trial court concluded appellant's request for trial de novo had to be filed no later than Monday, July 27, 1998, the first court day after the 30 days expired during the weekend of July 25-26, 1998. Concluding it could not extend the 30-day period, the court denied appellant's request for trial de novo filed one day later on July 28, 1998. Appellant observes, however, that it does not seek a lengthening of the 30 days in which to file a request for trial de novo. Rather, appellant contends that because it was never properly served with the award, the 30 days began to run only when it received actual notice of the award on July 24, 1998, making its request four days later timely. We agree.

[2] Rule 1615 obligates the arbitrator to serve the parties with the arbitration award. It states, "Within 10 days after the conclusion of the arbitration hearing the arbitrator shall file the award with the clerk, with proof of service on each party to the arbitration..." (Rule 1615(b).) Rule 1616 establishes a 30-day period for filing a request for trial de novo after the award is filed, but does not specifically require service of the award on the parties. It provides, "Within 30 days after the arbitration award is filed with the clerk of the court, a party may request a trial by filing with the clerk a request for trial..." (Rule 1616(a).) Although rule 1616 does not mention service of the award in triggering the 30 days for filing a request for trial *554 de novo, such a requirement is properly found for several reasons. First, it harmonizes rule 1615, which requires service of the award, with rule 1616. The appropriateness of such harmonization was established in *Oats v. Oats* (1983) 148 Cal.App.3d 416, 196 Cal.Rptr. 20. There, the court found the only sensible application of the two rules was to start counting the 30 days for requesting a trial de novo after the award was served.

(Id. at p. 421, 196 Cal.Rptr. 20 ["the filing of the arbitration award must be deemed ineffective until such time as service is made"].)

[3] The second reason for requiring service of the award before triggering the 30-day period is due process. It would violate long-standing notions of due process if an adverse action could be taken against a party without notice. (Id. at p. 420, 196 Cal.Rptr. 20 ["The requirement of notice is so fundamental to concepts of due process that it is deemed jurisdictional in nature."].) Accordingly, before a court can enter an arbitrator's award as its judgment, the parties must have notice of the award. As the *Oats* court explained, "the superior court is without jurisdiction to act further in the matter until the parties are served or otherwise obtain actual notice of the award.... To construe rule 1615(b) in any other way than to require proof of service (or alternatively, evidence of actual service) for an effective (i.e., jurisdictional) filing of an arbitration award would be to abrogate constitutional guarantees of due process." (Id. at p. 421, 196 Cal.Rptr. 20.)

The third, and final, reason for imposing a service requirement is social and judicial efficiency. Parties ought to be able to rely on the arbitrator's discharge of his duty to ****227** serve the award under rule 1615. If parties cannot rely on the arbitrator, the only way they can protect themselves from expiration of the 30-day period is to repeatedly examine the court file for the award's unannounced filing. Such examinations would be needlessly burdensome to the clerk of the court and unnecessarily costly to the parties. It is far better to construe court rules with the presumption that the arbitrator satisfies his obligation to properly serve his award.

For the foregoing reasons, we find that in the absence of proper service, appellant's 30 days for filing a request for trial de novo did not begin until appellant received actual notice of the arbitrator's award. (*Oats v. Oats, supra*, 148 Cal.App.3d at p. 421, 196 Cal.Rptr. 20 [court lacks jurisdiction to enter judgment "until the parties are served or otherwise obtain actual notice of the award"].) Here, appellant's attorneys did not receive actual notice of the award until they picked up their mail at their former offices on July 24, 1998. Because appellant filed its request for trial de novo four days later, its request was well within 30 days. Accordingly, the court erred in denying ***555** appellant's motion to vacate the judgment and grant a trial de novo. (*Mentzer v. Hardoin* (1994) 28 Cal.App.4th 1365,

1369, 34 Cal.Rptr.2d 214 ["When a trial de novo request is timely filed, it is error as a matter of law to strike it or to deny a motion to vacate a judgment entered upon the arbitration award."].)

Respondent's principal argument against granting a trial de novo is the lack of evidence of the date on which the arbitrator remailed his award to the old address for appellant's attorneys. Respondent complains appellant did not offer into evidence the original envelope with the original postmark, which would have established the date the arbitrator attempted to re-serve the award. Instead, appellant submitted only a photocopy of the envelope with an illegible postmark. Respondent's argument is a red herring, however, because it does not matter when the arbitrator attempted reservice since it was indisputably misaddressed the first time and mailed to an old address the second time. Thus, the award was never properly served.

Respondent also claims the court disbelieved the declarations of appellant's attorneys that they did not receive actual notice of the award until they picked up their mail on July 24, 1998. The court made no such finding, however, and the fairest reading of the record does not support any such inference. During the hearing on appellant's motion to set aside the judgment, the court asked appellant why it had not filed its request for trial de novo one day earlier on Monday, July 27, 1998, when it still had time to do so. Such a question makes sense only if the court assumed the 30th day from the filing of the award had fallen over the immediately preceding weekend, making that Monday the last possible day to request a trial de novo. Furthermore, the court based its denial of appellant's motion on the ground it could not extend the time for filing such a request--such reasoning makes sense only if the court believed the time had already expired. Thus, nothing about the court's reasoning or ruling implies it disbelieved appellant's attorneys.

[4] Finally, respondent suggests appellant was somehow remiss in not contacting the arbitrator [FN3] or the court to determine the status of the arbitrator's award after the customary 10 days for issuing an award had passed. Whether appellant ideally could have done more to protect its interests is beside the point because proper notice is a jurisdictional prerequisite for the court's entry of the arbitrator's award as its judgment. (*Oats v. Oats, supra*, 148 Cal.App.3d at p. 421, 196 Cal.Rptr. 20; compare ****228** *Ayala v. Southwest Leasing & Rental,*

Inc. (1992) 7 Cal.App.4th 40, 45, 8 Cal.Rptr.2d 637
[*556 no relief for untimely request for trial de novo where attorney merely overlooked arbitrator's award in his files.] In any event, any possible shortfall by appellant's counsel pales in comparison to the arbitrator's failure to provide proper service as required by rule 1615, which imposes on the arbitrator, not the parties, the burden of filing and serving the arbitration award.

FN3. We note that respondent's suggestion ignores that it is improper for a party to contact an arbitrator for any purpose other than requesting continuances or scheduling matters. (Rule 1609.)

DISPOSITION

The order denying the request of appellant Los Angeles County Metropolitan Transportation Authority for a trial de novo is reversed and the trial court is directed to enter a new and different order granting the request. The matter is remanded for further proceedings. Each side to bear its own costs on appeal.

TURNER, P.J., and GRIGNON, J., concur.

74 Cal.App.4th 550, 88 Cal.Rptr.2d 224, 99 Cal. Daily Op. Serv. 6881, 1999 Daily Journal D.A.R. 8791

Briefs and Other Related Documents ([Back to top](#))

- [1999 WL 33738613](#) (Appellate Brief) Appellant's Reply Brief (Mar. 29, 1999)
- [1999 WL 33738611](#) (Appellate Brief) Respondent's Brief (Mar. 19, 1999)
- [1999 WL 33738612](#) (Appellate Brief) Appellant's Opening Brief (Feb. 19, 1999)

Court of Appeal, Second District, Division 1,
California.

Nancy M. OATS, a minor, by Martha OATS, her
Guardian Ad Litem, Plaintiffs and
Respondents,

v.

Michael William OATS, Defendant and Appellant.

Civ. 67910.

Oct. 27, 1983.

Defendant appealed from an order of the Superior Court, Los Angeles County, Ralph A. Biggerstaff, J., denying his motion to set aside a judgment entered pursuant to an arbitration award. The Court of Appeal, Spencer, P.J., held that: (1) since superior court is without jurisdiction to act further in an arbitration matter until the parties are served or otherwise obtain actual notice of the award, filing of an arbitration award must be deemed ineffective until such time as service is made; (2) inasmuch as jurisdictional function of service renders a filing of an arbitration award ineffective until such time as service is made, 20-day period in which a party may file a request for trial de novo after an arbitration award must be deemed to commence with service of the award, and clerk is without authority to enter the award as a judgment until expiration of that 20-day period; and (3) where arbitration award was entered as a judgment less than 20 days after award's effective filing date in violation of rule of court, circumstance justified vacation of award as a judgment taken by surprise, and thus lower court erred as a matter of law in denying defendant's motion to vacate judgment.

Reversed with directions.

West Headnotes

[1] Constitutional Law  **251.6**
92k251.6 Most Cited Cases

Requirement of notice is so fundamental to concepts of due process that it is deemed jurisdictional in nature. U.S.C.A. Const.Amend. 14.

[2] Process  **146**
313k146 Most Cited Cases
(Formerly 313k1, 313k48, 313k144)

In a court proceeding, notice is provided by service of process; it is actual service which vests a court with jurisdiction to act in a matter rather than proof of service; hence, when proof of service is mislaid, lost or otherwise unavailable, courts are liberal in allowing proof of actual service.

[3] Process  **127**
313k127 Most Cited Cases

Proof of service fulfills function of establishing that procedures implementing constitutional requirements of due process were followed giving assurance that service really has been made, and thus when adequate proof of service is available, it is of no legal import that a party actually may not have received notice; that being the case, courts are very strict in applying statutory standards for proof of service; failure to strictly comply with those standards deprives the court of jurisdiction to act. U.S.C.A. Const.Amend. 14.

[4] Courts  **85(1)**
106k85(1) Most Cited Cases

Rules of court have the force of positive law; they are as binding on Court of Appeal as procedural statutes unless they transcend legislative enactments or constitutional guarantees.

[5] Arbitration  **55**
33k55 Most Cited Cases

Language of rule providing that within ten days after conclusion of an arbitration hearing, arbitrator shall file his award with the clerk, with proof of service on each party to the arbitration, evinces a recognition that actual service is as essential to confer upon the court jurisdiction to act further in an arbitration proceeding as in any other proceeding. Cal.Rules of Court, Rule 1615(b).

[6] Arbitration  **55**
33k55 Most Cited Cases

Since superior court is without jurisdiction to act further in an arbitration matter until the parties are served or otherwise obtain actual notice of an arbitration award, filing of an arbitration award must be deemed ineffective until such time as service is made. Cal.Rules of Court, Rule 1615(b).

[7] Courts  **85(3)**
106k85(3) Most Cited Cases

Rule permitting any party to an arbitration to request a trial by filing a written request with the clerk within 20 days after the arbitration award is filed, and rule requiring clerk to enter arbitration award as a judgment forthwith upon expiration of 20-day period after award is filed if no party has served or filed a request for trial, must be read in harmony with rule providing that within ten days after completion of arbitration hearing, arbitrator shall file his award with the clerk with proof of service on each party to the arbitration. Cal.Rules of Court, Rules 1615(b, c), 1616(a).

[8] Arbitration  **73.5**
33k73.5 Most Cited Cases

Inasmuch as jurisdictional function of service renders a filing of an arbitration award ineffective until such time as service is made, 20-day period within which a party may file a request for trial de novo must be deemed to commence with service of the award; clerk is without authority to enter an arbitration award as a judgment until expiration of that 20-day period. Cal.Rules of Court, Rules 1615(b, c), 1616(a).

[9] Arbitration  **76(3)**
33k76(3) Most Cited Cases

Where arbitration award was entered as a judgment less than 20 days after award's effective filing date in violation of rule of court, such circumstance justified vacation of the award under provisions of code of civil procedure, in that judgment was taken by surprise, and thus lower court erred as a matter of law in denying defendant's motion to vacate judgment. Cal.Rules of Court, Rule 1615(c); West's Ann.Cal.C.C.P. § 473.

****21 *418** Gilbert, Kelly, Crowley & Jennett, and Patrick A. Mesisca, Jr. and Michael I.D. Mercy, Los Angeles, for defendant and appellant.

No appearance for plaintiffs and respondents.

***419** SPENCER, Presiding Justice.

INTRODUCTION

Defendant Michael William Oats appeals from an order denying his motion to set aside a judgment entered on December 15, 1981, pursuant to an arbitration award filed November 13, 1981.

STATEMENT OF FACTS

On April 19, 1977, plaintiff Nancy M. Oats, by her guardian ad litem Martha Oats, filed a personal injury complaint arising out of an automobile accident. Defendant answered, after which the superior court found the amount in controversy did not exceed \$15,000 and ordered the matter into arbitration on July 15, 1981. It was stipulated that the Honorable John J. Donnellan would serve as arbitrator.

An arbitration hearing was held on November 6, 1981. Thereafter, on November 13, Judge Donnellan executed and filed an award in favor of plaintiff; no proof of service of the award on the parties was attached and the parties did not, in fact, receive notice of the award at this time. On December 4, 1981, the superior court arbitration clerk served copies of the award on the parties by mail, and filed a proof of service attesting to that fact.

Defendant served on plaintiff by mail a request for a trial de novo and submitted the same to the superior court on December 17, 1981; the request was filed on December 21. On December 15, 1981, the clerk of ****22** the superior court served on the parties by mail notice of entry of judgment.

Defendant moved to set aside entry of the judgment on the ground defendant had filed a request for trial de novo within 20 days of service of the arbitration award. The motion was taken off calendar for failure to appear and subsequently refiled. Following a hearing on April 6, 1982, the motion was denied.

CONTENTION

Defendant contends the trial court erred in denying his motion to vacate entry of the judgment, in that a lodging with the court of an arbitration award, *sans* proof of service and *sans* actual notice to the parties of the award, is ineffective as a "filing" within the meaning of California Rules ***420** of Court, rules 1615(b) and 1616(a); hence, defendant's request for a trial de novo was timely. For the reasons set forth below, we agree.

DISCUSSION

[1][2] The requirement of notice is so fundamental to concepts of due process that it is deemed jurisdictional in nature. (See, e.g., *Gray v. Hall* (1928) 203 Cal. 306, 318, 265 P. 246; *City etc. of San Francisco v. Carraro* (1963) 220 Cal.App.2d 509, 518, 33 Cal.Rptr. 696.) In a court proceeding, notice is provided by service of process; it is *actual* service which vests a court with jurisdiction to act in a matter rather than proof of service. Hence, when

proof of service is mislaid, lost or otherwise unavailable, the courts are liberal in allowing proof of actual service. (*Ibid.*)

[3] However, proof of service fulfills the function of establishing that "procedures implementing the constitutional requirements of due process were followed giving assurance that service really has been made." (*West v. West* (1979) 92 Cal.App.3d 120, 124, 154 Cal.Rptr. 667.) Accordingly, when adequate proof of service is available, it is of no legal import that a party actually may not have received notice. (*Ibid.*) That being the case, the courts are very strict in applying the statutory standards for proof of service; failure to strictly comply with those standards deprives the court of jurisdiction to act. (*Ibid.*)

[4] California Rules of Court, rule 1615(b) provides in pertinent part: "Within 10 days after the conclusion of the arbitration hearing the arbitrator shall file his award with the clerk, with proof of service on each party to the arbitration." (Emphasis added.) Rules of Court have the force of positive law; they are as binding on this court as procedural statutes unless they transcend legislative enactments or constitutional guarantees. (*Trickey v. Superior Court* (1967) 252 Cal.App.2d 650, 654, fn. 4, 60 Cal.Rptr. 761; *Albermont Petroleum, Ltd. v. Cunningham* (1960) 186 Cal.App.2d 84, 89, 9 Cal.Rptr. 405.) Nothing in rule 1615(b) transcends the procedural arbitration statutes, Code of Civil Procedure sections 1141.14 and 1141.20. Hence, we are bound by the rule unless it contravenes constitutional principles.

[5] The language of rule 1615(b) clearly evinces a recognition that actual service is as essential to confer upon the court jurisdiction to act further in an arbitration proceeding as in any other proceeding--a principle well established. As noted in *Rusnak v. General Controls Co.* (1960) 183 Cal.App.2d 583, 585, 7 Cal.Rptr. 71, an arbitration award is "a nullity as long as the contents of it, and even the fact that it existed, were unknown to the parties. One who is called upon to render a decision has *421 not done so when he merely made up his mind what the decision should be. And placing his thoughts on paper adds nothing so long as they are kept secret from the parties."

[6] Since the superior court is without jurisdiction to act further in the matter until the parties are served or otherwise obtain actual notice of the award (*City etc. of San Francisco v. Carraro, supra*, 220 Cal.App.2d 509, 513, 33 Cal.Rptr. 696), the filing of the

arbitration award must be deemed ineffective until such time as service is made. To construe rule 1615(b) in any other way than to require proof of service (or **23 alternatively, evidence of actual service) for an effective (i.e., jurisdictional) filing of an arbitration award would be to abrogate constitutional guarantees of due process. Whether judged by the "proof of service" or "evidence of actual service" test, the result is the same in the instant matter; defendant was not served with the arbitration award until December 4.

[7] California Rules of Court, rule 1616(a) permits any party to an arbitration to request a trial by filing a written request with the clerk within 20 days after the arbitration award is filed. Rule 1615(c) requires the clerk to enter the arbitration award as a judgment "forthwith upon the expiration of 20 days after the award is filed if no party has, during that period, served and filed a request for trial as provided in [rule 1616(a)]." Although neither of the above provisions mentions service of the award on the parties, they must be read in harmony with rule 1615(b). (*People v. Comingore* (1977) 20 Cal.3d 142, 147, 141 Cal.Rptr. 542, 570 P.2d 723.)

[8] In that the jurisdictional function of service renders a filing of the arbitration award ineffective until such time as service is made, the 20 day period within which a party may file a request for trial de novo must be deemed to commence with service of the award. The clerk is without authority to enter the award as a judgment until expiration of that 20 day period. (*Usher v. Soltz* (1981) 123 Cal.App.3d 692, 697, 176 Cal.Rptr. 746.)

[9] The instant arbitration award was entered as a judgment less than 20 days after the award's effective filing date in violation of rule 1615(c); that circumstance justifies vacation of the award under the provisions of Code of Civil Procedure section 473, in that such a judgment is taken by surprise. (*Ibid.* [rule 1615(d) is no bar to the application of section 473 when judgment is entered in violation of rule 1615(c)].) Accordingly, the lower court erred as a matter of law in denying defendant's motion to vacate the judgment.

*422 The order is reversed and the superior court is directed to enter a new and different order granting the motion and setting the matter for trial forthwith.

DALSIMER and FAINER, [FN*] JJ., concur.

FN* Appointed by the Chairperson of the
Judicial Council.

West's Washington Court Rules
Part IV. Rules for Superior Court

VI. Superior Court Mandatory Arbitration Rules (Mar)

VI. Award

→RULE 6.2 FILING OF AWARD

Filing and Service of Award. Within 14 days after the conclusion of the arbitration hearing, the arbitrator shall file the award with the clerk of the superior court, with proof of service of a copy on each party. On the arbitrator's application in cases of unusual length or complexity, the arbitrator may apply for and the court may allow up to 14 additional days for the filing and service of the award. Late filing shall not invalidate the award. The arbitrator may file with the court and serve upon the parties an amended award to correct an obvious error made in stating the award if done within the time for filing an award or upon application to the superior court to amend.

[Amended effective September 1, 1993; September 1, 1994.]

West's Washington Court Rules

Part IV. Rules for Superior Court

Superior Court Mandatory Arbitration Rules (Mar)

VI. Award

→RULE 6.3 JUDGMENT ON AWARD

Judgment. If within 20 days after the award is filed no party has sought a trial de novo under rule 7.1, the prevailing party on notice as required by CR 54(f) shall present to the court a judgment on the award of arbitration for entry as the final judgment. A judgment so entered is subject to all provisions of law relating to judgments in civil actions, but it is not subject to appellate review and it may not be attacked or set aside except by a motion to vacate under CR 60.

[Amended effective September 1, 1994.]

West's Annotated California Codes Currentness

California Rules of Court (Refs & Annos)

Title Five. Special Rules for Trial Courts (Refs & Annos)

Division III. Alternative Dispute Resolution Rules for Civil Cases (Refs & Annos)

Chapter 3. Judicial Arbitration Rules (Refs & Annos)

→ **Rule 1615. The award; entry as judgment; motion to vacate**

(a) [The award; form and content]

(1) The award must be in writing and signed by the arbitrator. It must determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate.

(2) The arbitrator is not required to make findings of fact or conclusions of law.

(b) [Filing the award]

(1) Within 10 days after the conclusion of the arbitration hearing, the arbitrator must file the award with the clerk, with proof of service on each party to the arbitration. On the arbitrator's application in cases of unusual length or complexity, the court may allow up to 20 additional days for the filing and service of the award.

(2) Within the time for filing the award, the arbitrator may file and serve an amended award.

(c) [Entry of award as judgment]

(1) The clerk must enter the award as a judgment forthwith upon the expiration of 30 days after the award is filed if no party has, during that period, served and filed a request for trial as provided in these rules.

(2) Promptly upon entry of the award as a judgment the clerk must mail notice of entry of judgment to all parties who have appeared in the case and must execute a certificate of mailing and place it in the court's file in the case.

(3) The judgment so entered has the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil case or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in (d). The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

(d) [Vacating award]

(1) A party against whom a judgment is entered pursuant to an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in section 473 or subdivisions (a)(1), (2), and (3) of section 1286.2 of the Code of Civil Procedure, and upon no other grounds.

(2) The motion must be heard upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made as soon as practicable after the moving party learned of the existence of those grounds.

C

West's Annotated California Codes Currentness

California Rules of Court (Refs & Annos)

Title Five. Special Rules for Trial Courts (Refs & Annos)

▣ Division III. Alternative Dispute Resolution Rules for Civil Cases (Refs & Annos)

▣ Chapter 3. Judicial Arbitration Rules (Refs & Annos)

→ **Rule 1616. Trial after arbitration**

(a) [Request for trial; deadline] Within 30 days after the arbitration award is filed with the clerk of the court, a party may request a trial by filing with the clerk a request for trial, with proof of service of a copy upon all other parties appearing in the case. A request for trial filed after the parties have been served with a copy of the award by the arbitrator, but before the award has been filed with the clerk, shall be deemed valid and timely filed. The 30-day period within which to request trial may not be extended.

(b) [Restoring case to civil active list] The case must be restored to the civil active list for prompt disposition, in the same position on the list it would have had if there had been no arbitration in the case, unless the court orders otherwise for good cause.

(c) [References to arbitration during trial prohibited] The case must be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.

(d) [Costs after trial] In assessing costs after the trial, the court must apply the standards specified in section 1141.21 of the Code of Civil Procedure.

