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NO. 78290-3

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS, in its own capacity and as assignee of claims of University Mechanical Contractors, Inc., Bergelectric Corporation, and Pacific Construction Systems, Inc.,

Respondent,

v.

FLUOR DANIEL, INC., a foreign corporation, and FIREMAN'S FUND INSURANCE COMPANY, a foreign corporation,

Petitioners.

STATE'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

In a construction contract dispute, Fluor Daniel, Inc. ("Fluor") and the Washington State Department of Corrections ("State" or "DOC") submitted unliquidated[1] claims to an arbitrator.[2] The parties' arbitration agreement provided the arbitrator with authority to decide all disputes and to award prejudgment interest if appropriate. Clerk's Papers ("CP") at 3-13. The agreement, however, expressly limited the form of the award to "the net amount awarded to the party, after all credits and offsets by reasons of payments or amounts claimed due by the other." CP at 5, 11 (p. 3, ¶ 5; and p. 4, ¶ 5).

The agreement provided that after issuance of the award:

> [E]ither party may submit the decision to [the superior court]. The parties agree the judgment to be entered will be in full and complete compliance with the decision of the Arbitrator.

CP at 6 (p. 4, ¶ 8).

The parties also agreed to "enter the award in court in accordance with the statutory procedure for enforcement of arbitration awards . . .." CP at 3. Moreover, they agreed that "[o]nce said agreement is entered the judgment will be final and binding on Fluor and DOC." CP at 6.

---

[1] Fluor conceded below that until entry of the arbitration award, its claims were unliquidated. Clerk's Papers ("CP") at 19, 26.

[2] The facts pertaining to the issues before this Court are simple and undisputed. Additional factual background is set forth at pages 1-3 of the Appellant's Opening Brief, filed May 27, 2005.

After a five-day hearing, the arbitrator issued a lump sum award of $5,997,645 to Fluor, which included "all appropriate credits and offsets by reason of payments or amounts claimed. . .." CP at 12. Three days after the award issued, Fluor moved to "confirm" the arbitration award.[3] CP at 13. It characterized the award as a "liquidated sum" and requested prejudgment interest. The superior court granted Fluor's request for prejudgment interest, added $43,380.22 to the award and entered judgment. CP at 39.

The State appealed because arbitration awards are not "liquidated claims" where prejudgment interest is allowed; instead, the lump sum award is analogous to a jury verdict or court ruling on an unliquidated claim. In each of those situations, interest does not accrue on unliquidated claims until they are merged into a judgment. Additionally, Fluor had effectively obtained an improper modification of the award by mischaracterizing it as a liquidated claim and requesting prejudgment interest. This breached the arbitration agreement because Fluor did not obtain a judgment "in full and complete compliance with the decision of the Arbitrator."

[3] The superior court entered judgment about 20 days after the award issued. CP at 37.

II. ARGUMENT SUMMARY

Fluor contends that it was entitled to this prejudgment interest because its unliquidated contract claims became liquidated once the award was entered. CP at 25; *see also* Fluor Response Brief at p. 6.[4] However, for nearly a century, this Court has held that interest does not accrue on unliquidated claims until they are merged into a judgment. *See Wright v. City of Tacoma*, 87 Wash. 334, 353-54, 151 P. 837 (1915). A claim, which starts the litigation process as unliquidated, is not transformed into a liquidated claim when the amount is fixed by a decision. Accordingly, this Court has held that interest does not accrue on jury verdicts resolving unliquidated claims. *E.g., Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 687, 15 P.3d 115 (2000); *Kiessling v. Northwest Greyhound Lines*, 38 Wn.2d 289, 297, 229 P.2d 335 (1951). Similarly, it has held that interest does not accrue upon a trial court award that resolved an unliquidated claim. *Phifer v. Burton*, 141 Wash. 186, 189, 251 P. 127 (1926).

The arbitration award that resolved Fluor's unliquidated claim is analogous to a jury verdict or court award. Although the award fixes the specific amount, it was only an intermediate stop along the road to judgment. *See Kiessling*, 38 Wn.2d at 297. Therefore the Court of Appeals correctly determined

[4] Filed June 24, 2005 with the Court of Appeals.

that interest did not begin to accrue until the judgment was entered. There is no reason to treat arbitration awards differently than jury verdicts or court awards for the purpose of interest accrual.

Although the Court of Appeals correctly applied this Court's precedent, there are alternative contractual and statutory grounds for affirming the decision below. First, Fluor breached the arbitration agreement by asking the court to add prejudgment interest.[5] The arbitration agreement authorized the arbitrator to award prejudgment interest. Whether he did so or not is unclear on the face of the award. Nonetheless, the agreement required the parties to obtain a judgment in the exact amount of the award and Fluor failed to do so. Parties should be able to define arbitration terms in an agreement. Such contracts should be enforced.

Additionally and alternatively, the superior court exceeded its authority under RCW 7.04.170[6] by going behind the face of the award and improperly modifying the award to add prejudgment interest.[7] Therefore, even if this court concludes that an arbitration award should be treated as a liquidated sum for the purposes of accruing prejudgment interest, it should affirm the Court of Appeal's decision in this case because the superior court improperly modified the award.

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[5] The State made this argument below in Appellant's Reply Brief (filed July 22, 2005) at 9.

[6] The Legislature revised the arbitration statutes effective January 1, 2006. The previous statute, RCW 7.04 (attached as Appendix A), governed this agreement. RCW 7.04A.030.

[7] The State made this argument below in Appellant's Opening Brief at pp. 11-13 and Appellant's Reply Brief at pp. 13-14.

III. ARGUMENT

A. Although the Arbitration Award Fixed an Amount, it Did Not Convert Fluor's Unliquidated Claim Into a Liquidated Claim

Unless it consents, the State is not liable for interest on its debts. *Architectural Woods, Inc. v. State*, 92 Wn.2d 521, 526, 598 P.2d 1372 (1979). Statutes, such as RCW 4.56.110, constitute explicit consent to liability for judgment interest. *See Weyerhaeuser*, 142 Wn.2d at 687. Additionally, this Court has held that the Legislature implicitly consents to liability for prejudgment interest when it authorizes state agencies to contract. *Architectural Woods,* 92 Wn.2d at 526-27.

1. The characterization of a claim as "liquidated" or "unliquidated" depends on the nature of the claim before it is adjudicated

Prejudgment interest may be awarded for "liquidated" claims. *Scoccolo Construction, Inc. v. City of Renton,* ___ Wn.2d ___, 145 P.3d 371, 377 (2006).[8] A claim is liquidated "where the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance on opinion or discretion." *Prier v. Refrigeration Engineering Co.,* 74 Wn.2d 25, 32, 442 P.2d 621 (1968). On the other hand, a claim is "unliquidated":

[8] The *Scoccolo* case is one of the latest to analyze whether a particular contract claim was liquidated. The decision cites well-established rules but provides no guidance on the issue of whether interest should accrue on arbitration awards.

> [W]here the exact amount of the sum to be allowed cannot be definitively fixed from facts proved, disputed or undisputed, but must in the last analysis depend upon the opinion or discretion of the judge or jury as to whether a larger or a smaller amount should be allowed.

Id. at 33.

The preceding definitions show that determining whether a claim is liquidated or unliquidated depends on the nature of the claim before the dispute is adjudicated by a judge or jury. *See Kiessling*, 38 Wn.2d at 297.

2. Interest does not accrue on an unliquidated claim until the claim is merged into a judgment

Dating back at least to 1915, this Court has held that interest on unliquidated claims does not begin to accrue until the claims are merged into a judgment. *See Buob v. Feenaughty Machinery Co.,* 4 Wn.2d 276, 300, 103 P.2d 325 (1940); *Wright v. City of Tacoma,* 87 Wash. 334, 353-54, 151 P. 837 (1915). This Court has applied this rule to unliquidated claims resolved by juries. *E.g., Weyerhaeuser,* 142 Wn.2d at 687. Additionally it has applied the rule to unliquidated claims resolved by judges. *Buob,* 4 Wn.2d at 300; *Phifer*, 141 Wash. at 189. The Court of Appeals implicitly applied the rule to an arbitration award. *Westmark Properties, Inc. v. McGuire*, 53 Wn. App. 400, 404, 766 P.2d 1146 (1989) (reversing trial court's addition of prejudgment interest to arbitration

award because trial court "had no basis for determining whether the amount awarded met the test for prejudgment interest . . . .").

> The theory upon which these decisions were based was *that the demands had not become liquidated until the verdict of the jury or award made by the court had become merged in the judgments thereafter entered.* The verdict of a jury or pronouncement by the court determines and fixes a definite amount of recovery but the demand is not fully liquidated until the entry of judgment.

Kiessling, 38 Wn.2d at 297 (emphasis added); *see also Weyerhaeuser*, 142 Wn.2d at 687 ("interest for the nonliquidated damages . . . runs only from date of judgment"). According to *Kiessling*, the Washington rule was consistent with the prevailing rule that in "the absence of a statute, interest runs from the date of entry of judgment and not from date of rendition of verdict." *Kiessling,* 38 Wn.2d at 298.

As the *Kiessling* and *Weyerhaeuser* opinions explain, the rule that interest on unliquidated claims begins to accrue upon entry of the judgment is consistent with legislative intent as expressed in RCW 4.56.110 and previous statutes. *Kiessling,* 38 Wn.2d at 297; Weyerhaeuser, 142 Wn.2d at 687. Judicial concern for legislative intent is particularly appropriate here because the State is not liable for interest unless the Legislature consented to such liability. *Architectural Woods,* 92 Wn.2d at 526. No statute provides that interest should accrue from arbitration awards. The most applicable statutes, the judgment interest statutes

cited in *Kiessling* and *Weyerhaeuser* provide that, with certain narrow exceptions not applicable here, interest begins to accrue upon entry of the judgment. *See also Lindsay v. Pacific Topsoils, Inc.*, 129 Wn. App. 672, 681-82, 120 P.3d 102 (2005) (holding that RCW 4.56.110 governs claimants' right to interest).

Here, an unliquidated claim was resolved by an arbitrator, but that provides no reason to depart from the general rule that interest begins to accrue when the claim is merged into the judgment. The legal significance of an arbitrator's award is similar to that of a jury verdict or judicial opinion. The award fixes a definite amount of recovery. An arbitrator's award, like a jury verdict or judicial opinion, lacks the finality of a judgment. The statutes authorizing arbitration confirm that absent a provision in the agreement to the contrary, arbitration awards, like verdicts or judicial awards, are not enforceable until reduced to judgment. RCW 7.04.210. Thus, like a jury verdict or judicial determination, an arbitrator's award requires additional procedural steps before it becomes an enforceable judgment. *See* RCW 7.04.150 and .190.

Moreover, an arbitration award may be vacated or modified like a jury verdict or judicial award. RCW 7.04.160-.170; *see also Channel v. Mills,* 61 Wn. App. 295, 299-300, 810 P.2d 67 (1991) (holding that because an arbitration award lacks the finality of judgment, it "is more akin to a jury verdict or trial court's memorandum opinion or oral decision, determinations which are not considered

equivalent to a judgment"). Because the arbitrator's award is similar to a jury verdict or judicial opinion with regard to permanence and enforceability, it should be treated similarly for accrual of prejudgment interest. Therefore just like a jury verdict or judicial ruling, an arbitrator's award does not alter the unliquidated nature of the underlying claim.

3. The parties to an arbitration agreement can determine whether to alter common law rules regarding prejudgment interest, but did not do so here

The recipient of an arbitration award is protected against a recalcitrant debtor through the power to compel entry of a judgment, not unlike a recipient of a favorable jury verdict or judicial determination. RCW 7.04.150. However, unlike conventional litigants, arbitration parties can specify that interest should accrue before entry of the judgment. *See Lent's, Inc. v. Santa Fe Engineers, Inc.*, 29 Wn. App. 257, 261, 628 P.2d 488 (1981). Thus, if a party perceives that it would be prejudiced by the general rule discussed above, it can negotiate an alternative arrangement.[9] *See State v. Fluor Daniel, Inc.*, 130 Wn. App. 629, 634 n.6, 126 P.3d 52 (2005). In that regard, an arbitration party is better positioned than a traditional litigant.

[9] For example, Fluor could have negotiated a requirement that interest accrued upon issuance of the arbitration award. Of course, it might have regretted such a provision if the result had been different and the net award favored the State.

An arbitration party can agree to modify the common law to the extent necessary. Because the parties here had the power but chose not to provide for prejudgment interest on the arbitrator's award, this Court should reject Fluor's invitation to modify the common law.

4. The *Moses Lake* case, upon which Fluor relies, involved a statute that declared the arbitration award to be "final and binding" which is different than RCW 7.04 that declared the *judgment* to be "final and binding"

Fluor contends that a Court of Appeals decision in a labor arbitration case, involving a special and unusual arbitration statute, stands for the proposition that interest should accrue to arbitration awards generally. *See* Fluor Response Brief at pp. 6-10. The court in that case, *City of Moses Lake v. International Ass'n of Firefighters, Local 2052*, 68 Wn. App. 742, 847 P.2d 16 (1993), analyzed RCW 41.56.450, which applies to collective bargaining disputes involving uniformed personnel.

Under that statute the arbitration award has a different legal significance than an award issued under the general arbitration statute, RCW 7.04. Under RCW 41.56.450, the decision of the arbitration panel:

> [S]hall be *final and binding* upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary and capricious.

(Emphasis added).

In the *Moses Lake* case, after the arbitration panel issued a decision favoring the union, the city sought judicial review. *Id.* at 743-44. The superior court upheld the award and did not award prejudgment interest. *Id.* at 745. Then, the city appealed the award again to the Court of Appeals and the union cross-appealed the prejudgment interest decision.

The Court of Appeals affirmed the superior court's decision on the merits of the award but reversed the superior court's decision on prejudgment interest. *Id.* at 743-44. In doing so, it relied upon the language in the collective bargaining statute that declared the arbitration award binding and enforceable:

> [T]he City was under a duty to raise the firefighters' salaries in the amount specified, subject only to review as provided in RCW 41.56.450.

Id.

The collective bargaining statute does not apply to the construction contract dispute in this case. Instead, RCW 7.04 applies. Those two statutes treat the finality and enforceability of arbitration awards quite differently. In contrast to RCW 41.56.450, an arbitration award under RCW 7.04 is only enforceable once confirmed as a judgment. RCW 7.04.210. In this case, the parties adhered

to the statute and agreed that "[o]nce said *judgment* is entered, the *judgment* will be final and binding on Fluor and DOC."[10] CP at 6 (emphasis added).

However, Fluor argues that the parties' agreement to waive their rights to appeal the award made the award final and binding. Fluor Petition for Review at pp. 9-10. There are three problems with this argument. First, under the arbitration statute there is no right to appeal the award; only the final judgment or court order may be appealed. RCW 7.04.220. Therefore, an agreement to waive the statutory appeal rights does not make an unconfirmed award enforceable. Second, as mentioned earlier, the parties' arbitration agreement declared that the judgment – not the award – was binding and enforceable. Thus, Fluor's interpretation of the appeal waiver provision is inconsistent with other terms of the agreement. Third, Fluor acted inconsistently with its own interpretation of the agreement by asking the superior court to add interest to the award. Under *Dayton v. Farmer's Insurance Group*, 124 Wn.2d 277, 280-81, 876 P.2d 896 (1994), the superior court had no authority to enter judgment in a different amount without satisfying the criteria of RCW 7.04.170. Thus, if as Fluor contends, the parties waived their right to seek modification of the award, the superior court clearly had no authority to add prejudgment interest. *See also* § III.C *infra*. For

[10] They also agreed that either party would follow the "statutory procedure for enforcement of arbitration awards . . . ." CP at 3.

each of these reasons, the parties' agreement to waive their right to appeal the award did not make it eligible for prejudgment interest.

Moreover, as the court below found, the result in *Moses Lake* is analogous to RCW 4.56.110(4). *State v. Fluor Daniel, Inc.*, 130 Wn. App. at 634. That statute specifies that interest runs from the verdict date when the trial court is directed to enter judgment. Because the superior court's role in *Moses Lake* was similar to that of an appellate court reviewing a jury verdict, the prejudgment result replicated the jury verdict situation.[11]

In sum, this Court has long held that interest does not accrue on an unliquidated claim until it is reduced to judgment. That rule shows appropriate deference to the Legislature – the branch of government empowered to define State liability for interest. That rule should be applied here. Arbitration parties have statutory remedies against recalcitrant debtors and there is no need to announce new common law that treats the holder of an arbitration award different from those holding jury verdicts or judicial opinions.

B. Fluor Breached the Arbitration Agreement by Seeking a Larger Judgment Amount

The arbitration process stems from a contractual or consensual arrangement between two disputants. *Balfour, Guthrie & Co., Ltd. v. Commercial*

[11] Additional analysis of the *Moses Lake* case is provided at pages 9-12 of the Appellant's Opening Brief and at pp. 9-12 of the Appellant's Reply Brief.

Metals Co., 93 Wn.2d 199, 607 P.2d 856 (1980). As long as the terms are consistent with the statutes, arbitration agreements are supported by public policy and enforceable. *Lake Washington School Dist. No. 414 v. Mobile Modules Northwest, Inc.,* 28 Wn. App. 59, 61, 621 P.2d 791 (1980).

Several provisions in this arbitration agreement demonstrate that Fluor and the State did not intend for a separate prejudgment interest award. The parties authorized the arbitrator to include interest in his award. CP at 4-5 ("it is the intent of the parties to resolve all outstanding disputes known or which should have been known as of the date of this Agreement"); CP at 5 (noting that the arbitrator's authority included the power to add sales tax to an "award amount or interest"). They also directed him to issue a lump sum or undifferentiated award that specified only the net amount awarded.[12] CP at 11. These provisions confirm that neither party contemplated that a judge could add additional prejudgment interest to the lump sum award. If allowed, such interest might possibly duplicate matters already addressed by the arbitrator and embedded in the lump sum award.

[12] Because the arbitrator adhered to this directive, it is impossible to determine whether the award includes a component of prejudgment interest. *See Westmark Properties, Inc. v. McGuire,* 53 Wn. App. 400, 404, 766 P.2d 1146 (1989) (reversing an award modification that went beyond the face of the award to add prejudgment interest).

Further demonstrating their intention to authorize the arbitrator to decide liability for interest, the parties specified that the judgment obtained would be "in full and complete compliance" with the decision of the arbitrator. CP at 6. In other words, the parties made the arbitrator the sole judge of law and fact pertaining to all claims, including interest claims. *See Northern State Const. Co. v. Banchero*, 63 Wn.2d 245, 249-50, 386 P.2d 625 (1963). Fluor should not be allowed to misuse the confirmation process to get a second bite at this apple. *See Dayton*, 124 Wn.2d at 280 (court lacks the authority to enter a judgment that differs from the award unless statutory grounds for correction or modification are met).

Finally, the arbitration statute and agreement provided each party with a remedy in the event that either attempted to delay judgment entry. Either was authorized to seek immediate confirmation. RCW 7.04.150. Fluor exercised this right and moved to have the award confirmed within three days. CP at 13. Once the award was confirmed as judgment, it became binding and interest began to accrue. RCW 4.56.110. Thus, prejudgment interest should not be based on the mistaken notion that the State improperly delayed payment.

By asking the court to add prejudgment interest to the award, Fluor obtained a judgment that was not "in full and complete compliance with the decision of the Arbitrator." Fluor's prejudgment interest request therefore

breaches the arbitration agreement. The express terms of the arbitration agreement thus provide an alternative ground for affirming the Court of Appeals. Therefore, even if this Court decides that the arbitration award converted Fluor's unliquidated claims into a liquidated sum, it should not allow Fluor to avoid its contractual obligation to adhere to the award.

C. The Superior Court Lacked the Legal Authority to Add Prejudgment Interest to the Award

The litigants' agreement to submit claims to an arbitrator greatly restricts the authority of the superior court judge. *Dayton,* 124 Wn.2d at 279. The court must confirm the award unless it is modified, corrected or vacated. *Id.* at 280. After an award is issued the court's power to modify it is limited to situations:

> (1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.
>
> (2) Where the arbitrators have awarded upon a matter not submitted to them.
>
> (3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof.

RCW 7.04.170.

The mistake, error, or imperfection must be evident on the face of the award. *Boyd v. Davis*, 127 Wn.2d 256, 263, 897 P.2d 1239 (1995). Regarding items ancillary to the main claims, this Court has held that the superior court

could not add attorneys' fees to an arbitration award unless it met the criteria for correction or modification set forth in RCW 7.04.170. *Dayton,* 124 Wn.2d at 279-80. The Court of Appeals has held that a court cannot routinely add prejudgment interest to the award. *Westmark Properties, Inc. v. McGuire*, 53 Wn. App. 400, 404, 766 P.2d 1146 (1989). The *Westmark* opinion explained:

> Inasmuch as the court was foreclosed from going behind the face of [sic] award, it had no basis for determining whether the amount awarded met the test for prejudgment interest; this was part of the merits of the controversy, forbidden territory for a court.

Westmark Properties, 53 Wn. App. at 404.

Fluor's argument that the addition of prejudgment interest does not constitute modification, if accepted, expands the court's limited authority. One could always avoid the limits of RCW 7.04.170 by recharacterizing a request for judgment as seeking "confirmation" of the award amount and a judgment in the amount of the award plus some other sum. The label that Fluor places upon the superior court's action should not change the fact that the court lacked authority to add prejudgment interest, because the subject of prejudgment interest claims was granted by contract to the arbitrator.

Fluor did not allege error on the face of the award and the superior court did not identify an error. CP at 13-17, 37-39. Accordingly, RCW 7.04.170 did

not authorize the addition of prejudgment interest. *Dayton*, 124 Wn.2d at 280; *Westmark Properties*, 53 Wn. App. at 404.

There is no provision in the entire arbitration chapter allowing the court to add prejudgment interest as part of the confirmation process. There is no statute anywhere requiring that interest accrue on arbitration awards. And as explained previously, the Legislature has said that interest should accrue upon judgment entry. RCW 4.56.110(4). This legislative directive should be given its plain meaning.

IV. CONCLUSION

For the preceding reasons, the State asks that this Court affirm the Court of Appeal's decision.

RESPECTFULLY SUBMITTED this 11th day of December, 2006.

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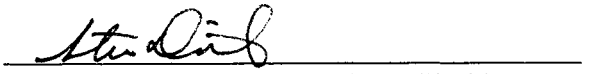

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APPENDIX A

Unemployment compensation, review, etc., see ch. 50.32.
Unlawful entry and detainer, see ch. 59.16.
Veterans, guardianship, see ch. 73.36.
Warehouseman's lien, see ch. 62A.7.
Waste and trespass, see ch. 64.12.
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CHAPTER 7.04

ARBITRATION

Section

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Cross References

Arbitration of labor disputes, see ch. 49.08.

Library References

Form, attorney-client agreement, see Wash.Prac. vol. 1A, Barker and Scharf, § 37.13.
Pleadings, affirmative defenses, arbitration and award, see Wash.Prac. vol. 3A, Orland, CR 8.
Superior court mandatory arbitration rules, see Wash.Prac. vol. 4A, Orland and Tegland, MAR 1.1 et seq.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

7.04.010. Arbitration authorized

Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this chapter, any controversy which may be the subject of an action existing between them

at the time of the agreement to submit, or they may include in a written agreement a provision to settle by arbitration any controversy thereafter arising between them out of or in relation to such agreement. Such agreement shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement.

The provisions of this chapter shall not apply to any arbitration agreement between employers and employees or between employers and associations of employees, and as to any such agreement the parties thereto may provide for any method and procedure for the settlement of existing or future disputes and controversies, and such procedure shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement.

Enacted by Laws 1943, ch. 138, § 1. Amended by Laws 1947, ch. 209, § 1.

Historical and Statutory Notes

Saving—Laws 1943, ch. 138: "Sections 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, and 274 of the Code of 1881 (sections 420 to 430, both inclusive, Remington's Revised Statutes; sections 7339 to 7349, both inclusive, Pierce's Code) are hereby repealed: *Provided, however,* That arbitration proceedings pending upon the effective date of this act may be carried through to final judgment under the provisions of said sections, which are hereby continued in effect for such purposes only." [Laws 1943, ch. 138, § 23.] This applies to §§ 7.04.010 to 7.04.170, 7.04.180 to 7.04.-220.

Source:

RRS § 430–1.

Cross References

Arbitration of labor disputes, see § 49.08.010 et seq.

Law Review Commentaries

Regulation of franchising in Washington: arbitration agreements. 48 Wash. L.Rev. 387 (1973).

Settlement of dispute by arbitration. 1 Wash.L.Rev. 243 (1926).

Washington Arbitration Act. 22 Wash. L.Rev. 117 (1947).

Library References

Arbitration ⇐1.
Contracts ⇐284 to 292.
Insurance ⇐568, 570.
Labor Relations ⇐431 to 438.
Partnership ⇐82.
Workers' Compensation ⇐1115.
WESTLAW Topic Nos. 33, 95, 217, 232A, 289, 413.

C.J.S. Arbitration §§ 2, 3.
C.J.S. Contracts §§ 496 to 500.
C.J.S. Insurance §§ 1113, 1115.
C.J.S. Labor Relations §§ 424 to 458.
C.J.S. Partnership § 93.
C.J.S. Workmen's Compensation § 402.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

United States Supreme Court

Limitations, labor relations, discharged employee's underlying claim against an employer, on which he brought suit under Labor Management Relations Act [29 U.S.C.A. §§ 185, 185(a)], was based upon collective-bargaining agreement, a contract, but indispensable predicate for such action was not showing under traditional contract law that discharge was breach of collective bargaining agreement but was, instead, a demonstration that union breached its duty of fair representation, and action was thus more analogous to action to vacate arbitration award than to straight contract action, see United Parcel Service, Inc. v. Mitchell (1981) 101 S.Ct. 1559, 451 U.S. 56, 67 L.Ed.2d 732.

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1. Validity of statute

Code chapter relating to arbitration was not a special statute but, having been enacted with the Code of Civil Procedure, formed an integral part thereof. Mitsubishi Goshi Kaisha v. Carstens Packing Co. (1921) 116 Wash. 630, 200 P. 327.

2. In general

Agreement for arbitration made in this state is without effect unless it complies with statute. Dickie Mfg. Co. v. Sound Const. & Eng. Co. (1916) 92 Wash. 316, 159 P. 129; Taylor v. Basye (1922) 119 Wash. 263, 205 P. 16.

Arbitration stems from contractual, consensual relationship. Balfour, Guthrie & Co., Ltd. v. Commercial Metals Co. (1980) 93 Wash.2d 199, 607 P.2d 856.

Arbitration is statutory proceeding in this state with parties' right to it controlled by this chapter. Northern State Constr. Co. v. Banchero (1963) 63 Wash.2d 245, 386 P.2d 625.

Arbitration agreement good in state where it is made can be enforced in another state even though it is not executed with formalities required in latter state. Taylor v. Basye (1922) 119 Wash. 263, 205 P. 16.

All questions of public policy as to propriety of arbitration are resolved in this state, both by legislature and by courts, in favor of recognizing it as method by which disputing parties may settle their differences. Zindorf Const. Co. v. Western American Co. (1901) 27 Wash. 31, 67 P. 374.

Whenever parties to contract leave it doubtful whether dispute was intended to be left to arbitrators, construction is in favor of resort to courts. Van Horne v. Watrous (1895) 10 Wash. 525, 39 P. 136.

3. Common-law

Common-law arbitration no longer exists in this state. Dickie Mfg. Co. v. Sound Const. & Eng. Co. (1916) 92 Wash. 316, 159 P. 129; Fisher Flouring Mills Co. v. United States (CCA 1927) 17 F.2d 232; Smith v. Department of Labor & Industries (1934) 176 Wash. 569, 30 P.2d 656; Suksdorf v. Suksdorf (1916) 93 Wash. 667, 161 P. 465.

Arbitration agreement between parties having option to make either common-law or statutory arbitration, must be construed to be common-law arbitration, where it fails to provide for statutory arbitration and contains provisions, contrary to provisions for statutory arbitrations, that findings shall be "final, conclusive and binding upon all parties." Carey v. Herrick (1928) 146 Wash. 283, 263 P. 190.

4. Federal law

Federal Arbitration Act [9 U.S.C.A. §§ 2, 3] required enforcement of arbitration clause in franchise agreement in interstate commerce, despite judicial remedies afforded by Franchise Investment Protection Act, which gives jurisdiction of such matters to state courts, and despite fact that cause of action was based on alleged violations of the act. Allison v. Medicab Intern., Inc. (1979) 92 Wash.2d 199, 597 P.2d 380.

A contractual agreement inextricably linked to the continuing operations of an interstate business involves commerce between the states and, when arbitration provisions are included, brings such an agreement within the provisions of the federal arbitration act, 9 U.S.C. §§ 1 to 14. Pinkis v. Network Cinema Corp. (1973) 9 Wash.App. 337, 512 P.2d 751.

In the absence of any expressed intent of the parties to the contrary, disputes respecting an agreement involving interstate commerce which contains arbitration provisions, including claims of fraud in the inducement, must be submitted to arbitration under the terms of the federal arbitration act, 9 U.S.C. §§ 1 to 14, regardless of contrary provisions of state statutes. Only those claims specifically alleging fraud in the inducement of the arbitration provisions themselves may be heard by the courts. Pinkis v. Net Work Cinema Corp. (1973) 9 Wash.App. 337, 512 P.2d 751.

5. Nature of proceedings

Statutory remedy for settlement of disputes by arbitration is exclusive of all others. Fisher Flouring Mills Co. v. United States (CCA 1927) 17 F.2d 232.

Since effect of statutory provisions is to substitute arbitration for preliminary part of judicial proceeding, proceeding is itself judicial in nature. Puget Sound Bridge & D. Co. v. Lake Washington Shipyards (1939) 1 Wash.2d 401, 96 P.2d 257.

Arbitration proceeding in this state is wholly statutory. Puget Sound Bridge & Dredging Co. v. Frye (1927) 142 Wash. 166, 252 P. 546.

6. Authority of court—In general

Even frivolous claims are arbitrable, and court has no business weighing merits of grievance or determining whether there is particular language in labor agreement to support claim; such decisions are for arbitrator and court's inquiry is at an end if complaint on its face calls for interpretation of agreement. Local Union No. 77, Intern. Broth. of Elec. Workers v. Public Utility Dist. No. 1, Grays Harbor County (1985) 40 Wash.App. 61, 696 P.2d 1264.

Method or procedure arbitrator adopted to ascertain quantity is solely within his province and is of no concern of the courts, unless it appears on face of return, that method adopted must result in error of fact. Puget Sound Bridge & Dredging Co. v. Frye (1927) 142 Wash. 166, 252 P. 546.

Courts will enforce contracts to arbitrate disputes and make decision of arbitrators final where parties so intend. Skagit County v. Trowbridge (1901) 25 Wash. 140, 64 P. 901.

7. —— Consolidation of multiple arbitrations, authority of court

Court did not have authority to order consolidated multiparty arbitration at location other than that agreed upon, where the contracts were silent on consolidation and the arbitration was to be in accordance with rules of American association which has long-established policy of not approving consolidation without written consent of all the parties. Balfour, Guthrie & Co., Ltd. v. Commercial Metals Co. (1980) 93 Wash.2d 199, 607 P.2d 856.

Neither trial court nor court of appeals had power to order consolidation of arbitration proceedings between property owner and between contractor and property owner and architect, who objected to consolidation, where such parties did not provide in their contracts for consolidation, and none of the parties either neglected or refused to proceed in their separate arbitration proceedings; even if court of appeals had such power, dissimilarity of issues in the proceedings would have precluded consolidation. S. K. Barnes, Inc. v. Valiquette (1979) 23 Wash.App. 702, 597 P.2d 941.

8. Authority of arbitrator

Scope of arbitrator's authority is question of contract interpretation that parties have delegated to arbitrator. Local Union No. 77, Intern. Broth. of Elec. Workers v. Public Utility Dist. No. 1, Grays Harbor County (1985) 40 Wash. App. 61, 696 P.2d 1264.

Arbitrators are not agents, but are private, extraordinary judges of domestic tribunal, selected by parties themselves to decide controversies submitted, and are not subject to direction and control of either party. Hegeberg v. New England Fish Co. (1941) 7 Wash.2d 509, 110 P.2d 182.

9. Subjects of arbitration—In general

Claims under the Consumer Protection Act, § 19.86.010 et seq., are not referable to arbitration under broad arbitration clause contained in written agreement for sale of candy dispensing machines and therefore were not subject to the stay provisions of the Arbitration Act (9 U.S.C.A. § 3). Wineland v. Marketex Intern., Inc. (1981) 28 Wash.App. 830, 627 P.2d 967.

Parties can be bound to arbitrate specified future disputes as outgrowth of membership in organization which has bylaws providing for arbitration of such disputes. Adams (Keith) & Associates, Inc. v. Edwards (1970) 3 Wash.App. 623, 477 P.2d 36.

Provision in lease for arbitration of all disputes that may arise, if necessary to determine values of properties or cost of labor and materials in respect to various obligations of parties, does not apply to constructive eviction and abandonment of premises. Buerkli v. Alderwood Farms (1932) 168 Wash. 330, 11 P.2d 958.

Agreement for appraisal of damages "by virture of the operations of the United States Reclamations Service in construction of a pipe line," confined to damages to existing improvements, growing crops during current season, and failure to remove surplus dirt, does not cover damages because of increase of alkaline condition of farm lands, found not due to operations of Bureau in construction of pipes. Carstens Packing Co. v. Granger Irr. Dist. (1931) 160 Wash. 674, 295 P. 930.

Agreement to arbitrate any dispute arising as to proper fulfilment of contract for sale of prunes does not submit to arbitration a dispute as to proper construction of trade terms in contract fixing price to be paid. Gile v. Tsutakawa (1920) 109 Wash. 366, 187 P. 323.

Tender to arbitrate dispute not submitted by arbitration agreement would not have effect of reading same into contract. Gile v. Tsutakawa (1920) 109 Wash. 366, 187 P. 323.

10. —— Employer-employee disputes, subjects of arbitration

Parties to collective bargaining agreement can opt to use procedures of this chapter even though this section contains exclusion for labor arbitration. Sheet Metal Workers Intern. Ass'n, Local Union 150 v. Air Systems Engineering, Inc., C.A.9 (Wash.) 1987, 831 F.2d 1509.

Absent express provision in collective bargaining agreement excluding particular grievance, only the most forceful evidence of purpose to exclude claim from arbitration can prevail. Local Union No. 77, Intern. Broth. of Elec. Workers v. Public Utility Dist. No. 1, Grays Harbor County (1985) 40 Wash.App. 61, 696 P.2d 1264.

Order to arbitrate will not be denied unless it may be said with positive assurance that arbitration clause is not susceptible of interpretation that covers asserted dispute. Local Union No. 77, Intern. Broth. of Elec. Workers v. Public Utility Dist. No. 1, Grays Harbor County (1985) 40 Wash.App. 61, 696 P.2d 1264.

Arbitrator had authority to entertain grievance by provisional teacher even though superintendent, while grievance was pending made nonappealable decision to not renew her teaching contract; arbitrator's remedy would be limited only in that he could not reinstate teacher to full contract status. North Beach Ed. Ass'n v. North Beach School Dist. No. 64 (1982) 31 Wash.App. 77, 639 P.2d 821.

Reduction of working hours of certain clerical and technical school district employees, who argued that "work week" provision of collective bargaining agreement had been violated by employer's action, created arbitrable issue that should be resolved by arbitrator, despite employer's argument that it had right to reduce working hours under agreement's "management rights clause." Shoreline School Dist. No. 412 v. Shoreline Ass'n of Educational Office Emp. (1981) 29 Wash.App. 956, 631 P.2d 996, amended in another respect 639 P.2d 765.

Obligation to submit an issue to arbitration is wholly contractual; and arbitrability of a labor dispute depends upon the terms of the agreement. Meat Cutters Local #494 Affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America v. Rosauer's Super Markets, Inc. (1981) 29 Wash.App. 150, 627 P.2d 1330.

Claim by union that prior to and during negotiations of a collective bargaining agreement with employer, employees were allowed to wear beards, and that therefore they should continue to be allowed to do so was a question properly to be submitted to arbitration, despite facts that there was no express provision covering facial hair in the agreement, and that the agreement provided that the arbitrator would not decide on any subject the condition of which was not specifically treated in the contract, as the past practice of wearing facial hair was an implied part of the bargaining agreement. Meat Cutters Local #494 Affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America v. Rosauer's Super Markets, Inc. (1981) 29 Wash.App. 150, 627 P.2d 1330.

All doubts under collective bargaining agreement should be resolved in favor of arbitration. Pasco Ed. Ass'n v. Pasco School Dist. No. 1, Franklin County (1980) 27 Wash.App. 147, 615 P.2d 1357, amended in another respect 622 P.2d 915.

Issue of whether teacher was entitled to experience credit for probationary term arose out of and involved interpretation or application of express term of teacher's contract and was therefore grievance which was subject to arbitration. Pasco Ed. Ass'n v. Pasco School Dist. No. 1, Franklin County (1980) 27 Wash.App. 147, 615 P.2d 1357, amended in another respect 622 P.2d 915.

Where language of arbitration clause in contract indicates desire on part of parties to include all controversies that may arise under principal agreement, clause will be given effect and no more specific designation of arbitrable matters is needed. Thorgaard Plumbing & Heating Co. v. King County (1967) 71 Wash.2d 126, 426 P.2d 828.

Under 1947 amendment, parties to collective bargaining agreements still have option to provide by specific agreement that procedure of act of 1943 shall be applicable and available to them in applying or enforcing provisions of arbitration clauses; or they may agree on arbitration procedures other than those under act; but, irrespective of election by agreement to use or not use procedures

provided in the act, arbitration clauses agreed on by the parties and inserted in collective bargaining agreements are not subject to common law rule permitting revocation at will of the parties. Greyhound Corp. v. Division 1384 of Amalgamated Assn. of St. Elec. R. & M.C. Emp. (1954) 44 Wash.2d 808, 271 P.2d 689.

Statute relating to arbitration is inapplicable to adjustment of labor disputes between employer and employees. Gord v. Harmon (F. S.) & Co. (1936) 188 Wash. 134, 61 P.2d 1294.

Arbitration provided for by former RRS §§ 420 et seq. was wholly inapplicable to labor dispute, and was not common-law arbitration, but it did not follow that arbitration of labor dispute was invalid because it did not conform to those sections. Gord v. Harmon (F. S.) & Co. (1936) 188 Wash. 134, 61 P.2d 1294.

Arbitration cannot be had of injured workman's claim for industrial insurance. Smith v. Department of Labor & Industries (1934) 176 Wash. 569, 30 P.2d 656.

11. —— Fraud, subjects of arbitration

Claim by lessor of fraudulent inducement to enter into arbitration clause contained in equipment lease was properly before arbitration panel for decision under arbitration clause contained in lease. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

12. —— Securities, subjects of arbitration

Claims under Washington's Consumer Protection Act (ch. 19.86) and Washington's Securities Act (ch. 21.20) are referable to arbitration under an arbitration clause contained in an executed brokerage agreement; Federal Arbitration Act (9 U.S.C.A. § 2) mandates that all claims, either statutory or nonstatutory, arising under a written brokerage agreement be settled by arbitration in accordance with the terms of the brokerage agreement; overruling *Wineland v. Marketex Int'l, Inc.*, 28 Wash.App. 830, 627 P.2d 967. Garmo v. Dean, Witter, Reynolds, Inc. (1984) 101 Wash.2d 585, 681 P.2d 253.

13. Political subdivisions

Neither arbitration proceedings nor applications to court for confirmation of arbitration award are lawsuits or "actions" within meaning of county nonclaim statute (§ 36.45.030) and, therefore, filing of claim for damages pursuant to § 36.45.010 is not condition precedent to arbitrating dispute involving county or obtaining court order confirming arbitration award against county. Thorgaard Plumbing & Heating Co. v. King County (1967) 71 Wash.2d 126, 426 P.2d 828.

Municipal corporations including counties have power to arbitrate their disputes; and this chapter provides means by which such disputes may be resolved by arbitration. Thorgaard Plumbing & Heating Co. v. King County (1967) 71 Wash.2d 126, 426 P.2d 828.

14. Validity of agreements

Agreements to arbitrate are valid, supported by public policy, and enforceable. Lake Washington School Dist. No. 414 v. Mobile Modules Northwest, Inc. (1980) 28 Wash.App. 59, 621 P.2d 791.

Agreement for arbitration may provide that decision of arbitrators shall be unanimous. Holdridge v. Garretson (1929) 152 Wash. 226, 277 P. 982.

Agreement to submit all disputes thereafter to arise under contract is valid and enforceable and cannot be revoked by one of the parties to it. State ex rel. Fancher v. Everett (1927) 144 Wash. 592, 258 P. 486.

Under statutory provisions that agreement to arbitrate shall be in writing, signed by parties, and may be by bond in any sum, conditioned to abide award, agreement to arbitrate need not contain express provision to abide award. Suksdorf v. Suksdorf (1916) 93 Wash. 667, 161 P. 465.

Parties to arbitration provision cannot be heard to complain, absent showing arbitrator was guilty of misconduct or corruption. Skagit County v. Trowbridge (1901) 25 Wash. 140, 64 P. 901.

Stipulation that finding of arbitrators shall be approved by city council in order to be binding upon city does not void agreement for arbitration, since such provision merely constitutes council a member of board of arbitrators.

Lidgerwood Park Water Works Co. v. Spokane (1898) 19 Wash. 365, 53 P. 352.

15. Appraisal

Stipulation by which, pending injunction against blasting, appraisers were named to determine value of property before and after blast, was one for appraisal, as distinguished from arbitration and award, where appraisers had no authority to hear or take testimony of witnesses. Stevenson v. Hazard (1929) 152 Wash. 104, 277 P. 450.

Contract compromising and settling all controversies between parties to logging contract, except quantity of timber removed, which was to be determined by two designated cruisers, and in case of dispute by named umpire, is one of appraisement and not of arbitration. Wagner v. Peshastin Lbr Co. (1928) 149 Wash. 328, 270 P. 1032.

Agreement to submit to appraisers amount of damages resulting to property from construction of pipe-line, if parties could not agree thereon, was not agreement to submit existing controversy to arbitration, but agreement for common-law appraisal. Peterson v. Granger Irr. Dist. (1926) 137 Wash. 668, 243 P. 847.

16. Certiorari

Since arbitration award in favor of county employee did not involve inferior tribunal, board or officer, may not have involved exercise of judicial function, and was subject to meaningful review, trial court lacked jurisdiction to grant certiorari. Grays Harbor County v. Williamson (1981) 96 Wash.2d 147, 634 P.2d 296.

17. Employer-employee disputes, generally

This section did not apply to breach of contract claim by school custodian who applied for head custodian position that was given to employee with less seniority, where school district and custodian had agreed to submit any dispute arising under their agreement to mediation, rather than to arbitration. Yaw v. Walla Walla School Dist. No. 140 (1986) 106 Wash.2d 408, 722 P.2d 803.

Statute authorizing arbitration was inapplicable to collective bargaining agreement which provided for mediation, not arbitration. Yaw v. Walla Walla School Dist. No. 140 (1985) 40 Wash.App. 36, 696 P.2d 1250, affirmed 106 Wash.2d 408, 722 P.2d 803.

In deciding appeal in declaratory judgment action which sought judgment declaring that no arbitrable issue existed and that school district employees had not complied with initial grievance discussion step of contractual agreement procedures, court of appeals had to resolve all doubts in favor of arbitrability. Shoreline School Dist. No. 412 v. Shoreline Ass'n of Educational Office Emp. (1981) 29 Wash.App. 956, 631 P.2d 996, amended in another respect 639 P.2d 765.

An agreement to submit disputes to arbitration is binding on the parties, and where such an agreement provides that the arbitration award is final, a fair and impartial award produced in the manner required by the agreement is binding on the parties and enforceable by the courts so long as the due process requisites of notice and opportunity to present evidence have been met. Tombs v. Northwest Airlines, Inc. (1973) 83 Wash.2d 157, 516 P.2d 1028.

Arbitration practice or procedure to be followed by parties to collective bargaining contract is simply matter for them to work out by agreement in drawing up arbitration clauses of such agreements, and they will be bound by terms of their agreements. Greyhound Corp. v. Division 1384 of Amalgamated Assn. of St. Elec. R. & M.C. Emp. (1954) 44 Wash.2d 808, 271 P.2d 689.

18. Insurance

Where policy coverage limits for uninsured motorist protection were part of agreement of submission to arbitration of dispute between insured and insurer as to claim under uninsured motorist coverage, arbitrator was without authority to make award in excess of scope of uninsured motorist coverage. Sullivan v. Great Am. Ins. Co. (1979) 23 Wash. App. 242, 594 P.2d 454.

19. Amendment of agreements

Where written logging contract provided for arbitration of all disputes, oral modification as to manner of payments did not nullify arbitration clause. Wager v. Odden (1928) 148 Wash. 188, 268 P. 151.

20. Revocation and termination of agreements

Agreement in advance, before dispute has arisen to submit to appraisers value and price of land held under option to purchase, is not agreement to submit existing controversy to arbitration and is therefore not subject to revocation by one of the parties as in arbitration at common law prior to award but is irrevocable agreement to leave price to appraisers, upon which specific performance of contract may be decreed. Martin v. Vansant (1917) 99 Wash. 106, 168 P. 990.

Where submission to arbitration is made a rule of court, it cannot be revoked even by consent of parties without order of court. McCann v. Alaska Lbr. Co. (1912) 71 Wash. 331, 128 P. 663.

Party who has submitted matter in dispute to arbitration is not estopped from revoking submission and repudiating award, when bias and prejudice of one of the arbitrators was unknown at time of submission, and knowledge thereof only developed during progress of arbitration, as consequence of his conduct taken in connection with inadequate amount allowed. Glover v. Rochester-German Ins. Co. (1895) 11 Wash. 143, 39 P. 380.

21. Prerequisite to suit

A party to an arbitration agreement must pursue the remedies provided therein prior to seeking relief through the courts. A party who resorts to the courts for relief rather than to arbitration does not waive his rights under the arbitration agreement when arbitration was not originally made available to him. Tombs v. Northwest Airlines, Inc. (1973) 83 Wash.2d 157, 516 P.2d 1028.

Arbitration of all disputes provided for in written logging contract is condition precedent to action, and covers dispute where nonliability is asserted on ground that no profits were made under contract. Wager v. Odden (1928) 148 Wash. 188, 268 P. 151.

Where contract provides arbitration shall be condition precedent to any action at law, communication from contractor to city to the effect he is willing to submit matter to arbitration according to contract comes too late after he has wrongfully terminated contract, refused to proceed thereunder, and permitted city to declare forfeiture for his default. Jackson v. Walla Walla (1924) 130 Wash. 96, 226 P. 487.

Where contract provides arbitration intended to avoid litigation as condition precedent to action at law by either party under contract, such method must be pursued before either party can resort to courts for adjustment. Jackson v. Walla Walla (1924) 130 Wash. 96, 226 P. 487.

Where it is stipulated in contract that all differences between parties arising out of the contract shall be submitted to arbitrators, whose decision therein shall be final and conclusive, no action can be maintained on the contract until after tender of arbitration of differences to other party and refusal thereof. Herring-Hall-Marvin Safe Co. v. Purcell (1914) 81 Wash. 592, 142 P. 1153, affirmed on rehearing 86 Wash. 694, 150 P. 1162.

Arbitration agreement necessarily implies that property over which dispute arises must remain in statu quo pending arbitration. Winsor v. German Sav. & Loan Soc. (1903) 31 Wash. 365, 72 P. 66.

Where one party to arbitration contract wilfully violates same and wrongfully dispossess other, he cannot be heard to say that other must propose arbitration before his right of action accrues. Winsor v. German Sav. & Loan Soc. (1903) 31 Wash. 365, 72 P. 66.

Where building contract gives owner right to fix and determine amount of damages sustained by reason of contractor's delay, and, if contractor dissents therefrom and they cannot agree, matter should be submitted to arbitrators, failure of contractor to so submit will entitle owner to set off amount of damages fixed by himself in action brought by contractor to recover on contract. Childs Lbr. & Mfg. Co. v. Page (1902) 28 Wash. 128, 68 P. 373.

22. Limitations

Six-year statute of limitations, § 4.16.-040, did not bar arbitration of issue of whether employee is entitled to experience credit for probationary terms, since the grievance was continuing one. Pasco Ed. Ass'n v. Pasco School Dist. No. 1, Franklin County (1980) 27 Wash.App. 147, 615 P.2d 1357, amended in another respect 622 P.2d 915.

Where teacher who was not given experience credit for the year he was on probation and association which filed grievance on behalf of teacher and others similarly affected waived any claim resulting from school district's conduct as result of their failure to follow language of the bargaining agreement which required initiation of grievance procedure within 60 days after knowledge of the occurrence of the grievance, issue of whether employee is entitled to experience credit for probationary term would be arbitrated only for the benefit of clarifying future contracts. Pasco Ed. Ass'n v. Pasco School Dist. No. 1, Franklin County (1980) 27 Wash.App. 147, 615 P.2d 1357, amended in another respect 622 P.2d 915.

23. Discovery

Court erred in ordering parties, over objection of one of them, to participate in prearbitration discovery, in absence of exceptional circumstances. Balfour, Guthrie & Co., Ltd. v. Commercial Metals Co. (1980) 93 Wash.2d 199, 607 P.2d 856.

Once arbitration proceedings are validly invoked, arbitrators are the ones who should determine nature and scope of the whole gambit of discovery, and they, not the court, must decide what facts, in what form, are necessary for their decisional process. Balfour, Guthrie & Co., Ltd. v. Commercial Metals Co. (1980) 93 Wash.2d 199, 607 P.2d 856.

24. Evidence

Where contract for arbitration provided that value of stock sold should be fixed by appraisers acting as board of arbitration, whose decision should be unanimous, parol evidence to show partial execution of contract by waiver of claim is inadmissible as tending to vary terms of contract. Holdridge v. Garretson (1929) 152 Wash. 226, 277 P. 982.

25. Questions of fact and law

Finding of implied waiver of arbitration clause presents mixed questions of law and fact if there is dispute as to meaning of legal terms at issue as well as to reasonableness of inferences to be drawn from the facts. Lake Washington School Dist. No. 414 v. Mobile Modules Northwest, Inc. (1980) 28 Wash.App. 59, 621 P.2d 791.

26. Waiver and estoppel

Guarantors did not waive arbitration provision when they allegedly breached parties' contract. B & D Leasing Co. v. Ager (1988) 50 Wash.App. 299, 748 P.2d 652.

Guarantors did not waive arbitration provisions in lease transaction by delaying nine months after lessor filed action in court to demand arbitration, even though parties did not conduct any settlement negotiations, where lessor's complaint expressly requested arbitration. B & D Leasing Co. v. Ager (1988) 50 Wash.App. 299, 748 P.2d 652.

A party may waive arbitration by failing to invoke arbitration clause when arbitration is ignored and legal action is commenced, but waiver will not be found absent conduct inconsistent with any other intention but to forego that right. Shoreline School Dist. No. 412 v. Shoreline Ass'n of Educational Office Emp. (1981) 29 Wash.App. 956, 631 P.2d 996, amended in another respect 639 P.2d 765.

School district employees, who allegedly did not initiate meeting with supervisor as required by collective bargaining agreement but who argued that meetings with their supervisors at which they were told of reduction in working hours complied with contract requirement, and who evinced every intention of arbitrating dispute when they filed request for arbitration, evidenced intent to arbitrate and thus did not waive arbitration of dispute whether reduction in working hours violated agreement. Shoreline School Dist. No. 412 v. Shoreline Ass'n of Educational Office Emp. (1981) 29 Wash.App. 956, 631 P.2d 996, amended in another respect 639 P.2d 765.

Builder, sued by school district for failure to complete school portables in time specified under contract, reserved right to demand arbitration as provided under contract by asserting right in its answer, nor was builder's limited use of discovery inconsistent with right to compel arbitration. Lake Washington School Dist. No. 414 v. Mobile Modules Northwest, Inc. (1980) 28 Wash.App. 59, 621 P.2d 791.

Parties to contract may waive arbitration provision, and party does so by failing to invoke clause when action is commenced and arbitration has been ignored. Lake Washington School Dist. No. 414 v. Mobile Modules Northwest, Inc. (1980) 28 Wash.App. 59, 621 P.2d 791.

Waiver of arbitration clause in contract may be accomplished expressly or by implication. Lake Washington School Dist. No. 414 v. Mobile Modules Northwest, Inc.(1980) 28 Wash.App. 59, 621 P.2d 791.

In order for school district to show builder had waived right to demand arbitration under building contract, school district did not have to show prejudice because of builder's failure to invoke arbitration clause, but only that builder had foregone a known right. Lake Washington School Dist. No. 414 v. Mobile Modules Northwest, Inc. (1980) 28 Wash.App. 59, 621 P.2d 791.

Insurer's failure to inform arbitrator of extent of uninsured motorist protection under policy did not estop insurer from objecting to award of damages to insureds in excess of policy limits. Sullivan v. Great Am. Ins. Co. (1979) 23 Wash.App. 242, 594 P.2d 454.

Parties to arbitration agreement may waive certain of statutory rights relating to arbitration. Adams (Keith) & Associates, Inc. v. Edwards (1970) 3 Wash.App. 623, 477 P.2d 36.

Implied waiver of right to arbitrate requires, among other things, acts or conduct inconsistent with subsequent assertion of that right, or failure to timely assert the right. Olympian Stone Co. v. MacDonald Constr. Co. (1969) 1 Wash. App. 410, 461 P.2d 589.

Superior court had jurisdiction of parties and subject matter of litigation in action on contract containing optional arbitration clause and court had right and duty to proceed when that jurisdiction was invoked, since parties to contract having an arbitration clause may waive it, and party does so by failing to invoke it in trial court when action is commenced against him on the contract. Pedersen v. Klinkert (1960) 56 Wash.2d 313, 352 P.2d 1025.

Covenant in contract providing for arbitration can be waived. Nolte & Co. v. Pieler Const. Co. (1959) 54 Wash.2d 30, 337 P.2d 710.

27. Res judicata and collateral estoppel

Where cause of action of employee of subcontractor against general contractor for injuries sustained at construction site was involved in arbitration between general contractor and subcontractor and presumably resolved in arbitration award, award was bar to any claim by general contractor against subcontractor for payment under contract indemnification clause of judgment injured employee might secure against general contractor. Tri-M Erectors, Inc. v. Donald M. Drake Co. (1980) 27 Wash.App. 529, 618 P.2d 1341.

Since it could not be determined that issue of proper method of accounting, although determined in prior federal securities action, was an essential, ultimate fact in securities fraud action as opposed to merely collateral or evidentiary fact, trial court improperly entered judgment for defendant on basis of collateral estoppel in shareholder's action to enforce reorganization agreement's arbitration clause to settle dispute on method of accounting. Beagles v. Seattle-First Nat. Bank (1980) 25 Wash. App. 925, 610 P.2d 962.

7.04.020. Applications in writing—How heard—Jurisdiction

Any application made under authority of this chapter shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions or petitions, except as otherwise herein expressly provided.

Jurisdiction under this chapter is specifically conferred on the district and superior courts of the state, subject to jurisdictional limitations.

Enacted by Laws 1943, ch. 138, § 2. Amended by Laws 1982, ch. 122, § 1.

Historical and Statutory Notes

Laws 1982, ch. 122, § 1, added the second paragraph.

Source:
RRS § 430–2.

Library References

Reference ⇐27 to 29.
WESTLAW Topic No. 327.

C.J.S. References §§ 37 et seq., 47 et seq.

Notes of Decisions

Notice 2
Sufficiency of application 1

1. Sufficiency of application

Teacher's alleging that school district breached collective bargaining agreement in denying her preparation period was notice to district that teacher was seeking whatever legal relief to which she was entitled, and specific notice that money damages would be possible recovery was not required. Endicott Educ. Ass'n v. Endicott School Dist. No. 308 (1986) 43 Wash.App. 392, 717 P.2d 763.

2. Notice

Five days' written notice of motion for confirmation order is notice that is required by § 7.04.150, and, therefore, out-of-state party who was given more than five days' written notice and was represented by counsel at hearings wherein arbitration award was confirmed received proper notice even though notice did not conform with 60-day notice requirement for personal service out of state. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

7.04.030. Stay of action pending arbitration

If any action for legal or equitable relief or other proceedings be brought by any party to a written agreement to arbitrate, the court in which such action or proceeding is pending, upon being satisfied that any issue involved in such action or proceeding is referable to arbitration under such agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in accordance with the agreement.

Enacted by Laws 1943, ch. 138, § 3.

Historical and Statutory Notes

Source:
RRS § 430–3.

Library References

Arbitration ⇐23.9.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 30.

Notes of Decisions

In general 1
Collective bargaining 3
Consumer protection 2
Employer-employee disputes 3
Franchises 4
Fraud 5
Leases 6

1. In general

Arbitration should be pursued before either party is entitled to judicial relief. Lake Washington School Dist. No. 414 v. Mobile Modules Northwest, Inc. (1980) 28 Wash.App. 59, 621 P.2d 791.

If one party initiates court action in spite of arbitration clause, other party is entitled to order staying litigation. Lake Washington School Dist. No. 414 v. Mobile Modules Northwest, Inc. (1980) 28 Wash.App. 59, 621 P.2d 791.

Before court can act under this statute to stay legal action until arbitration is completed pursuant to agreement to arbitrate dispute, it must find that arbitration clause is valid, in addition to satisfying statutory requirement that dispute is "referable to arbitration under such agreement." Greenlee v. AAACON Auto Transport, Inc. (1972) 6 Wash.App. 742, 496 P.2d 359.

Where parties contracted that all differences between them which might thereafter arise out of the contract should be submitted to arbitrators, whose decision should be final, no action could be maintained on the contract by either party until he had tendered arbitration of the differences to the other party and the latter had refused the tender. Herring-Hall-Marvin Safe Co. v. Purcell Safe Co. (1914) 81 Wash. 592, 142 P. 1153, affirmed on rehearing 86 Wash. 694, 150 P. 1162.

2. Consumer protection

Claims under the Consumer Protection Act, § 19.86.010 et seq., are not referable to arbitration under broad arbitration clause contained in written agreement for sale of candy dispensing machines and therefore were not subject to the stay provisions of the Arbitration Act (9 U.S.C.A. § 3). Wineland v. Marketex Intern., Inc. (1981) 28 Wash.App. 830, 627 P.2d 967.

3. Employer-employee disputes

Where collective bargaining agreement between company and union contains no language by which procedures contemplated by state arbitration act can be available to either union or company, union cannot rely on provisions of arbitration act to support motion in which union sought to stay court proceedings and to obtain order directing company to submit to arbitration, and court properly denied the motion. Greyhound Corp. v. Division 1384 of Amalgamated Assn. of St. Elec. R. & M.C. Emp. (1954) 44 Wash.2d 808, 271 P.2d 689.

4. Franchises

Franchisees, who did not allege that arbitration clause was fraudulently induced and who entered into franchise agreement voluntarily and with advice of independent counsel, submitted grievances to forum of arbitration provided in franchise contract rather than to state court. Allison v. Medicab Intern., Inc. (1979) 92 Wash.2d 199, 597 P.2d 380.

5. Fraud

Allegations to the effect that a party was unaware of arbitration provisions in an agreement, are insufficient to raise a claim that the agreement to arbitrate was fraudulently induced. Pinkis v. Net Work Cinema Corp. (1973) 9 Wash.App. 337, 512 P.2d 751.

6. Leases

Superior court properly stayed proceedings after lessee filed complaint where lessor had commenced arbitration proceedings pursuant to arbitration clause contained in equipment lease. Keen v. IFG Leasing Co. (1980) 28 Wash. App. 167, 622 P.2d 861.

7.04.040. Motion to compel arbitration—Notice and hearing—Motion for stay

(1) A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the court for an order directing the parties to proceed with the arbitration in accordance with their agreement. Eight days notice in writing of such application shall

be served upon the party alleged to be in default. Service thereof shall be made in the manner provided by law for service of a summons in a civil action in the court specified in RCW 7.04.020. If the court is satisfied after hearing the parties that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith, the court shall make an order directing the parties to proceed to arbitrate in accordance with the terms of the agreement.

(2) If the court shall find that a substantial issue is raised as to the existence or validity of the arbitration agreement or the failure to comply therewith, the court shall proceed immediately to the trial of such issue. If upon such trial the court finds that no written agreement providing for arbitration was made or that there is no default in proceeding thereunder, the motion to compel arbitration shall be denied.

(3) Either party shall have the right to demand the immediate trial by jury of any such issue concerning the validity or existence of the arbitration agreement or the failure to comply therewith. Such demand shall be made before the return day of the motion to compel arbitration under this section, or if no such motion was made, the demand shall be made in the application for a stay of the arbitration, as provided under subsection (4)(a) hereunder.

(4) In order to raise an issue as to the existence or validity of the arbitration agreement or the failure to comply therewith, a party must set forth evidentiary facts raising such issue and must either (a) make a motion for a stay of the arbitration. If a notice of intention to arbitrate has been served as provided in RCW 7.04.060, notice of the motion for the stay must be served within twenty days after service of said notice. Any issue regarding the validity or existence of the agreement or failure to comply therewith shall be tried in the same manner as provided in subsections (2) and (3) hereunder; or (b) by contesting a motion to compel arbitration as provided under subsection (1) of this section.

Enacted by Laws 1943, ch. 138, § 4.

Historical and Statutory Notes

Source:

RRS § 430-4.

Library References

Arbitration ⟹23 et seq.
Jury ⟹19(1), 25(6).
WESTLAW Topic Nos. 33, 230.

C.J.S. Arbitration §§ 35, 36, 39.
C.J.S. Juries §§ 50, 102.

United States Supreme Court

Preemption, stay of arbitration pending resolution of related third party litigation, see Volt Information Sciences, Inc. v. Board of Trustees, 1989, 109 S.Ct. 1248, 489 U.S. 468, 103 L.Ed.2d 488.

Notes of Decisions

In general 1
Clean hands 4
Order to arbitrate 3
Scope of inquiry by court 2

1. In general

In an action to compel arbitration, the threshold question of arbitrability is for the court; the sole inquiry is whether the parties bound themselves to arbitrate the particular dispute; and if the dispute can fairly be said to involve an interpretation of the agreement, the inquiry is at an end, and the proper interpretation is for the arbitrator. Meat Cutters Local #494 Affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America v. Rosauer's Super Markets, Inc. (1981) 29 Wash.App. 150, 627 P.2d 1330.

2. Scope of inquiry by court

In action by insured, who was injured while riding in uninsured vehicle owned by another, to compel insurer to arbitrate, there was no basis for trial court to enter finding without a trial that insured was driver at time of the accident and, thus, was not covered by underinsured motorist provision. Cantwell v. Safeco Ins. Co. (1984) 37 Wash.App. 133, 678 P.2d 852.

3. Order to arbitrate

Order directing parties to proceed with arbitration of dispute in accordance with agreement between them is not essential when both parties voluntarily submit to arbitration; and participation in the proceedings is evidence of voluntary submission. Adams (Keith) & Associates, Inc. v. Edwards (1970) 3 Wash.App. 623, 477 P.2d 36.

4. Clean hands

Arbitration will not be enforced at instance of party who wilfully violates contract, who is wrongdoer, and who by his wrong changes status quo of parties or property in dispute. Winsor v. German Sav. & Loan Soc. (1903) 31 Wash. 365, 72 P. 66.

7.04.050. Appointment of arbitrators by court

Upon the application of any party to the arbitration agreement, and upon notice to the other parties thereto, the court shall appoint an arbitrator, or arbitrators, in any of the following cases:

(1) When the arbitration agreement does not prescribe a method for the appointment of arbitrators.

(2) When the arbitration agreement does prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they should have been appointed has expired.

(3) When any arbitrator fails or is otherwise unable to act, and his successor has not been duly appointed.

(4) In any of the foregoing cases where the arbitration agreement is silent as to the number of arbitrators, three arbitrators shall be appointed by the court.

Arbitrators appointed by the court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate.
Enacted by Laws 1943, ch. 138, § 5.

Historical and Statutory Notes

Source:
RRS § 430–5.

Library References

Arbitration ⟹26 et seq.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 60, 62.

7.04.060. Notice of intention to arbitrate—Contents

When the controversy arises from a written agreement containing a provision to settle by arbitration a controversy thereafter arising between the parties out of or in relation to such agreement, the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of his intention to arbitrate. Such notice must state in substance that unless within twenty days after its service, the party served therewith shall serve a notice of motion to stay the arbitration, he shall thereafter be barred from putting in issue the existence or validity of the agreement or the failure to comply therewith.
Enacted by Laws 1943, ch. 138, § 6.

Historical and Statutory Notes

Source:
RRS § 430–6.

Library References

Arbitration ⟹23.1.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 35, 36, 39.

7.04.070. Hearing by arbitrators

The arbitrators shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party, and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award.

All the arbitrators shall meet and act together during the hearing but a majority of them may determine any question and render a final award. The court shall have power to direct the arbitrators to

proceed promptly with the hearing and determination of the controversy.
Enacted by Laws 1943, ch. 138, § 7.

Historical and Statutory Notes

Source:
RRS § 430–7.

Law Review Commentaries

Settlement of dispute by arbitration.
1 Wash.L.Rev. 243 (1926).

Library References

Arbitration ⟹31.10 et seq.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 89.

Notes of Decisions

In general 1
Bias and prejudice of arbitrator 3
Informal proceedings 2
Waiver 5
Withdrawal of issues 4

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1. In general

Although arbitration proceeding is in nature of judicial inquiry, calling for evidence and witnesses, standards of judicial conduct and efficiently implied to panel of arbitrators are markedly different from those resting by law and tradition on judicial officers. Northern State Constr. Co. v. Banchero (1963) 63 Wash.2d 245, 386 P.2d 625.

Arbitration proceeding being judicial in nature, its basic requisite is that persons whose rights and obligations are affected thereby have absolute right to be heard and to present their evidence, after reasonable notice of time and place of hearing. Puget Sound Bridge & D. Co. v. Lake Washington Shipyards (1939) 1 Wash.2d 401, 96 P.2d 257.

2. Informal proceedings

Party to arbitration proceeding cannot be heard to say that it had been deprived of any of its legal rights because investigation of arbitrators was informal and ex parte, where such course was with full knowledge of both parties to agreement, they voluntarily delivered to arbitrators all written data concerning controversy, and each submitted itself to ex parte examination without insisting that other be present. Puget Sound Bridge & D. Co. v. Lake Washington Shipyards (1939) 1 Wash.2d 401, 96 P.2d 257.

Since arbitration is matter of contract, parties may determine beforehand what issues are to be decided and whether evidence is to be taken on hearing in presence of both parties or is to be obtained through informal inquiry by arbitrators; and if parties agree or consent to reception of evidence ex parte or through informal inquiry and investigation, they cannot thereafter be heard to say, as to such evidence, that they have not had their day in court. Puget Sound Bridge & D. Co. v. Lake Washington Shipyards (1939) 1 Wash.2d 401, 96 P.2d 257.

3. Bias and prejudice of arbitrator

While arbitrator has general duty to disclose any circumstance or relationship when it would be reasonable to infer presence of bias, absence of impartiality, or existence of interest in welfare of one of parties flowing from relationship, there is no necessity to disclose relationship when it is matter of such public knowledge that it is reasonable for arbitrator, under all circumstances, to assume that relationship is known to both parties. St. Paul Ins. Cos. v. Lusis (1971) 6 Wash.App. 205, 492 P.2d 575.

4. Withdrawal of issues

After issues of dispute have been properly submitted to arbitration board, one

of parties may not unilaterally withdraw certain of issues from consideration of board. Thorgaard Plumbing & Heating Co. v. King County (1967) 71 Wash.2d 126, 426 P.2d 828.

5. Waiver

Right to be heard to which parties are entitled in arbitration proceedings may be repudiated or relinquished the same as all other rights and privileges; although such relinquishment must be voluntary and intentional, it may be either express or implied. Puget Sound Bridge & D. Co. v. Lake Washington Shipyards (1939) 1 Wash.2d 401, 96 P.2d 257.

7.04.080. Failure of party to appear no bar to hearing and determination

If any party neglects to appear before the arbitrators after reasonable notice of the time and place of hearing, the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them.

Enacted by Laws 1943, ch. 138, § 8.

Historical and Statutory Notes

Source:

RRS § 430-8.

Library References

Arbitration ⟹32.6.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 84.

Notes of Decisions

In general 1

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1. In general

Interpretation of organization's bylaws as providing that if party fails to appear arbitrators must find against the absent party would be contrary to this section. Adams (Keith) & Associates, Inc. v. Edwards (1970) 3 Wash.App. 623, 477 P.2d 36.

Arbitration is result of, and subject to, agreement of parties; and right to be heard and present evidence, to which parties are entitled in arbitration proceedings held pursuant to this chapter, may be waived same as any other right. Martin-Morris Agency v. Mietzner (1970) 1 Wash.App. 950, 465 P.2d 425.

7.04.090. Time of making award—Extension—Failure to make award when required

If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty days from the closing of the proceeding, unless the parties, in writing, extend the time in which that award may be made. If the arbitrator fails to make an award when required, the court, upon motion and hearing, shall order the arbitrator to enter an award within the time fixed by the court, and may impose sanctions or terms deemed reasonable by the court. Failure to make an award within the time required shall not divest the arbitrators of jurisdic-

tion to make an award or to correct or modify an award as provided in RCW 7.04.175.

Enacted by Laws 1943, ch. 138, § 9. Amended by Laws 1985, ch. 265, § 1.

Historical and Statutory Notes

Laws 1985, ch. 265, § 1, rewrote the section, which previously read:

"If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty days from the closing of the proceeding, and any award made after the lapse of such thirty days shall have no legal effect, unless the parties extend the time in which said award may be made or ratify any award made after the expiration of the thirty day period. Any extension of time or ratification of the award shall be in writing and signed by all parties to the arbitration."

Source:

RRS § 430-9.

Library References

Arbitration ⟹50.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 97.

Notes of Decisions

In general 1
Modification of award 2
Waiver 3

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1. In general

Parties to an arbitration fix the time within which an award must be made, either by specific agreement or by accepting the rules of an agency referred to in their arbitration clause; parties enjoy considerable freedom in this regard. Lent's, Inc. v. Santa Fe Engineers, Inc. (1981) 29 Wash.App. 257, 628 P.2d 488.

Generally, persons proceeding under an arbitration, valuation or appraisal agreement are limited by authority conferred by the contract, and to be binding, their report must be within time limit fixed by contract. Hegeberg v. New England Fish Co. (1941) 110 P.2d 182, 7 Wash.2d 509.

Where agreement for arbitration expressly limits time within which award is to be made, power of arbitrators expires at end of time limited, unless same is extended or waived. Jordan v. Lobe (1904) 34 Wash. 42, 74 P. 817.

Where, after arbitration hearing in which time for making award was limited to twenty days, it was agreed that award should not be considered until one of the arbitrators could go to Alaska and return, without anything being said about how long trip would take, and he returned two days before time expired, but nothing was done to make award until more than twenty days after such return, whereupon one of the parties served notice of revocation of arbitration, award made thereafter was void, and court was without jurisdiction to affirm it. Jordan v. Lobe (1904) 34 Wash. 42, 74 P. 817.

2. Modification of award

When, more than 30 days after close of arbitration proceedings, arbitrator changed arbitration award in dispute between insured and insurer as to uninsured motorist coverage to conform to terms of submission agreement, the insurance policy, he did not make another award in violation of this section governing extension of time for making of arbitration awards, but merely corrected initial award. Sullivan v. Great Am. Ins. Co. (1979) 23 Wash.App. 242, 594 P.2d 454.

3. Waiver

Arbitration award was not legally ineffective on ground that award was made 30 days after close of proceedings where parties agreed to be bound by construction industry arbitration rules of the American arbitration association in their contracts, CIA rule stated that party pro-

Note 3

ceeding with arbitration after knowledge that any provision or requirement has not been complied with and who fails to state objection thereto in writing shall be deemed to have waived right to object and subcontractor neither agreed nor objected to extension beyond 30-day limit requested by letter by American arbitration association. Lent's, Inc. v. Santa Fe Engineers, Inc. (1981) 29 Wash.App. 257, 628 P.2d 488.

Where time fixed in agreement for making award in labor dispute over wages, which was submitted to board of arbitrators, was waived by employees and employers, award could be made within reasonable period of time after final submission. Gord v. F. S. Harmon & Co. (1936) 188 Wash. 134, 61 P.2d 1294.

7.04.100. Representation by attorney

Any party shall have the right to be represented by an attorney at law in any arbitration proceeding or any hearing before the arbitrators.

Enacted by Laws 1943, ch. 138, § 10.

Historical and Statutory Notes

Source:

RRS § 430–10.

Library References

Arbitration ⟹32.6.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 84.

7.04.110. Witnesses—Compelling attendance

The arbitrators, or a majority of them, may require any person to attend as a witness, and to bring with him any book, record, document or other evidence. The fees for such attendance shall be the same as the fees of witnesses in the superior court. Each arbitrator shall have the power to administer oaths.

Subpoenae shall issue and be signed by the arbitrators, or any one of them, and shall be directed to the person and shall be served in the same manner as subpoenae to testify before a court of record in this state. If any person so summoned to testify shall refuse or neglect to obey such subpoenae, upon petition authorized by the arbitrators or a majority of them, the court may compel the attendance of such person before the said arbitrator or arbitrators, or punish said person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the courts of this state.

Enacted by Laws 1943, ch. 138, § 11.

Historical and Statutory Notes

Source:

RRS § 430–11.

Cross References

Witnesses, compelling attendance, see ch. 5.56.

Library References

Arbitration ⟹34.2.
Witnesses ⟹1 et seq.
WESTLAW Topic Nos. 33, 410.
C.J.S. Arbitration § 87.
C.J.S. Witnesses § 2 et seq.

Notes of Decisions

In general 1

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1. In general

Once arbitration proceedings are validly invoked, arbitrators are the ones who should determine nature and scope of the whole gambit of discovery, and they, not the court, must decide what facts, in what form, are necessary for their decisional process. Balfour, Guthrie & Co., Ltd. v. Commercial Metals Co. (1980) 93 Wash.2d 199, 607 P.2d 856.

7.04.120. Depositions

Depositions may be taken with or without a commission in the same manner and upon the same grounds as provided by law for the taking of depositions in suits pending in the courts of record in this state.

Enacted by Laws 1943, ch. 138, § 12.

Historical and Statutory Notes

Source:

RRS § 430–12.

Library References

Arbitration ⟹31.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 89.
Depositions, see Wash.Prac. vol. 4, Orland, CR 26 et seq.

Notes of Decisions

In general 1

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1. In general

Once arbitration proceedings are validly invoked, arbitrators are the ones who should determine nature and scope of the whole gambit of discovery, and they, not the court, must decide what facts, in what form, are necessary for their decisional process. Balfour, Guthrie & Co., Ltd. v. Commercial Metals Co. (1980) 93 Wash.2d 199, 607 P.2d 856.

7.04.130. Order to preserve property or secure satisfaction of award

At any time before final determination of the arbitration the court may upon application of a party to the agreement to arbitrate make such order or decree or take such proceeding as it may deem necessary for the preservation of the property or for securing satisfaction of the award.

Enacted by Laws 1943, ch. 138, § 13.

Historical and Statutory Notes

Source:
RRS § 430-13.

Library References

Arbitration ⇐23.7.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 35, 39, 41.

7.04.140. Form of award—Copies to parties

The award shall be in writing and signed by the arbitrators or by a majority of them. The arbitrators shall promptly upon its rendition deliver a true copy of the award to each of the parties or their attorneys.

Enacted by Laws 1943, ch. 138, § 14.

Historical and Statutory Notes

Source:
RRS § 430-14.

Library References

Arbitration ⇐51, 54.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 91, 98, 102.

Notes of Decisions

In general 1
Collateral estoppel 3
Damages 2
Punitive damages 2
Res judicata and collateral estoppel 3

1. In general

Arbitrator's letter to party involved in arbitration setting forth reasons for the previously delivered award could not be considered as a part of the award in determining whether award was erroneous as a matter of law where letter was not a part of the award nor a paper delivered with the award, but was made in response to party's request for reasons supporting the award. Lent's, Inc. v. Santa Fe Engineers, Inc. (1981) 29 Wash. App. 257, 628 P.2d 488.

2. Damages

Arbitrator was not precluded from awarding teacher money damages to rectify damage caused teacher for loss of preparation period by teacher's failure to request money damages in grievance, where grievance made clear that issue to be decided was whether breach of collective bargaining agreement occurred. Endicott Educ. Ass'n v. Endicott School Dist. No. 308 (1986) 43 Wash.App. 392, 717 P.2d 763.

In absence of any statutory authority, arbitrator in dispute between education association and school district could not award punitive damages against district, regardless of whether district deliberately violated contract. Kennewick Educ. Ass'n v. Kennewick School Dist. No. 17 (1983) 35 Wash.App. 280, 666 P.2d 928.

3. Res judicata and collateral estoppel

Where cause of action of employee of subcontractor against general contractor for injuries sustained at construction site was involved in arbitration between general contractor and subcontractor and presumably resolved in arbitration award, award was bar to any claim by general contractor against subcontractor for payment under contract indemnification clause of judgment injured employee might secure against general contractor. Tri-M Erectors, Inc. v. Donald M. Drake Co. (1980) 27 Wash.App. 529, 618 P.2d 1341.

Arbitration award between general contractor and subcontractor involving many items in subcontract for construction of stadium was not bar to suit by general contractor against subcontractor under indemnification clause of construction contract for general contractor's attorney's fees incurred in defending against claim brought by subcontractor's employee for injuries sustained during process of moving guy wires holding rebar towers in place where issue of expenses incurred in defending lawsuits arising from activities of subcontractor under subcontract was not included in arbitration award. Tri-M Erectors, Inc. v. Donald M. Drake Co. (1980) 27 Wash. App. 529, 618 P.2d 1341.

In action on contract brought against one subcontractor by another subcontractor which had contracted with subcontractor to construct curbs and sidewalks required by subcontract, award in arbitration proceedings between defendant and general contractor was not bar to plaintiff's action, where defendant had requested arbitration with general contractor, subject matter of arbitration had been contract between defendant and general contractor, award of arbitrators adjudicated only rights of parties to contract, and plaintiff was not party to arbitration. Nolte & Co. v. Pieler Const. Co. (1959) 54 Wash.2d 30, 337 P.2d 710.

7.04.150. Confirmation of award by court

At any time within one year after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is beyond the jurisdiction of the court, or is vacated, modified, or corrected, as provided in RCW 7.04.160 and 7.04.170. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof. The validity of an award, otherwise valid, shall not be affected by the fact that no motion is made to confirm it.

Enacted by Laws 1943, ch. 138, § 15. Amended by Laws 1982, ch. 122, § 2.

Historical and Statutory Notes

Laws 1982, ch. 122, § 2, in the first sentence, following "unless the award is" inserted "beyond the jurisdiction of the court, or is".

Source:
RRS § 430-15.

Library References

Arbitration ⇐72 to 72.4.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 120, 121, 122.

Notes of Decisions

In general 1
Findings 5
Limitations 2
Notice 3
Scope of court review 4

1. In general

Arbitrator's decision was final and enforceable in court where he disposed of

all issues on which parties had produced sufficient evidence to enable resolution and where he reserved for future arbitration disputes which subsequently became ripe for resolution. Cohen v. Graham (1986) 44 Wash.App. 712, 722 P.2d 1388.

Fact that party to arbitration may apply to superior court for confirmation of arbitration award is not equated with bringing of new action for purposes of determining whether out-of-state party is entitled to 60-day notice pursuant to § 4.28.180, governing personal service out of state. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

2. Limitations

Washington State's one-year limitations period for confirmation of arbitration award, and not National Labor Relations Act's six-month limitations period [29 U.S.C.A. § 10(5)] for bringing unfair labor practice charge, applied to union's suit to enforce ex parte arbitration award. Sheet Metal Workers Intern. Ass'n, Local Union 150 v. Air Systems Engineering, Inc., C.A.9 (Wash.) 1987, 831 F.2d 1509.

3. Notice

Five days' written notice of motion for confirmation order is notice that is required by this section, and, therefore, out-of-state party who was given more than five days' written notice and was represented by counsel at hearings wherein arbitration award was confirmed received proper notice even though notice did not conform with 60-day notice requirement for personal service out of state. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

4. Scope of court review

Court will not review arbitration award unless errors of law or fact are apparent on face of award. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

Lessee could not raise claim of fraudulent inducement to enter into arbitration clause contained in equipment lease in proceedings to confirm arbitration award in favor of lessor where lessee and lessor operated under lease containing arbitration clause for number of months before lessor commenced arbitration proceedings claiming default in payments under lease. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

5. Findings

Findings of fact which relate to matters which were submitted to arbitration and were not before court will not invalidate judgment confirming arbiter's award by their mere presence, but will be considered superfluous. Olympian Stone Co. v. MacDonald Constr. Co. (1969) 1 Wash.App. 410, 461 P.2d 589.

Court need not enter findings of fact in confirming arbitration award. Thorgaard Plumbing & Heating Co. v. King County (1967) 71 Wash.2d 126, 426 P.2d 828.

7.04.160. Vacation of award—Rehearing

In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

(1) Where the award was procured by corruption, fraud or other undue means.

(2) Where there was evident partiality or corruption in the arbitrators or any of them.

(3) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.

(5) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in RCW 7.04.060, or without serving a motion to compel arbitration, as provided in RCW 7.04.-040(1).

An award shall not be vacated upon any of the grounds set forth under subdivisions (1) to (4), inclusive, unless the court is satisfied that substantial rights of the parties were prejudiced thereby.

Where an award is vacated, the court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

Enacted by Laws 1943, ch. 138, § 16.

Historical and Statutory Notes

Source:

RRS § 430–16.

Library References

Arbitration ⇐76 to 78, 82(a).
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 149 to 177.

Notes of Decisions

In general 1
Attorney fees 11
Bias and prejudice 6
Burden of proof 10
Common law 2
Evidence 9
Failure to raise issue before arbitrator 7
Grounds generally 4
Mistake of law 5
Prejudice 6
Presumptions and burden of proof 10
Record 8
Scope of review 3
Unfairness 6

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1. In general

Courts will not review arbitration award unless errors of law or fact are apparent on face of it, since arbitrators acting under broad authority granted them by parties' agreement and statutes become judges of both law and fact; and, even where review is indicated, courts will not vacate or modify award unless parties were deprived of full and fair hearing, or of their right to submit evidence, or unless arbitrators' actions came within proscriptions of this section or § 7.04.170. Northern State Constr. Co. v. Banchero (1963) 63 Wash.2d 245, 386 P.2d 625.

2. Common law

Where common-law arbitrators were acting with unlimited authority, they were final judges of both law and fact, and could, if they wished, disregard the

law entirely, and decision was not reviewable by court for mistake in either law or fact. Carey v. Herrick (1928) 263 P. 190.

3. Scope of review

Court's review of arbitration proceeding is limited to whether or not statutory grounds, as specified in this statute, exist to vacate award, regardless of whether or not there were any violations of any American Arbitration Association rules. St. Paul Ins. Cos. v. Lusis (1971) 6 Wash. App. 205, 492 P.2d 575.

Where parties to dispute agree to submit their differences to arbitration, under provisions of statutes applicable thereto, and by terms of their submission of controversy to arbitration agree to be bound by its results, award by arbitrator is final and not reviewable by courts in absence of any showing of misconduct or corruption on his part. Skagit County v. Trowbridge (1901) 25 Wash. 140, 64 P. 901.

Under former provision, courts could not review on merits decision of arbitrators except to refer it back for corrections of errors appearing on face of award. School Dist. No. 5 v. Sage (1896) 13 Wash. 352, 43 P. 341.

4. Grounds generally

Arbitration award can be vacated only upon one of the grounds enumerated in this section; furthermore, grounds for vacation must appear on the face of the award, and evidence before arbitrator will not be considered by reviewing court. Westmark Properties, Inc. v. McGuire (Wash.App.1989) 53 Wash.App. 400, 766 P.2d 1146.

Arbitration award in dispute between owner of apartment properties and manager did not have to be vacated on grounds that arbitrator exceeded his powers or imperfectly executed them; arbitrator was empowered to decide issues submitted, which concerned manager's entitlement to reimbursement for expenses advanced, manager's entitlement to payment for commissions, and owner's entitlement to damages due to rental shortfalls, and arbitrator made full and final decision when he awarded manager dollar sum on reimbursement claim and concluded that damages on owner's counterclaim equaled manager's claim for commissions. Westmark Properties, Inc. v. McGuire (Wash.App. 1989) 53 Wash.App. 400, 766 P.2d 1146.

Although quitclaim deeds for easements were arguably produced after "reasonable time" for tender of title had passed, value of easements represented so small a portion of total arbitration award that breach relating to them was not material and did not excuse sewer district from performing its agreement. Liberty Lake Sewer Dist. No. 1 v. Liberty Lake Utilities Co., Inc. (1984) 37 Wash. App. 809, 683 P.2d 1117.

Arbitration award was not clearly erroneous as a matter of law under provision of this section, giving trial court authority for vacating an erroneous award where the arbitrators exceeded their powers, or so imperfectly executed them that final and definite award upon the subject matter submitted was not made, where award of arbitration was substantially sufficient on its face to settle the dispute, it was a decision on the merits, it disposed of all issues raised, and it was clear enough to indicate what each party was entitled to. Lent's, Inc. v. Santa Fe Engineers, Inc. (1981) 29 Wash.App. 257, 628 P.2d 488.

Lessee, under equipment lease containing arbitration clause, was bound by arbitration award in favor of lessor following default in payment by lessee where lessee failed to establish fraud or other matters sufficient to set aside award. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

Provision of subd.(4) for vacation of arbitration award where arbitrators exceed their authority authorizes court to consider challenge to award on ground that no binding arbitration agreement exists, or that dispute in question is not arbitrable under the agreement. Teufel Constr. Co. v. American Arbitration Assn. (1970) 3 Wash.App. 24, 472 P.2d 572.

If award of arbitrators substantially complies with law, it should not be disturbed for mere technical defects. Bachelder v. Wallace (1860) 1 Wash.Terr. 107.

5. Mistake of law

Arbitration award in favor of seller of pinto beans regarding amount due under contract, could not stand given error of law on face of award; award implied

that there was modification of contract, but modification could not be recognized for lack of consideration, but § 62A.2-209 provided that agreement modifying contract required no consideration to be binding. Lindon Commodities, Inc. v. Bambino Bean Co., Inc. (1990) 57 Wash.App. 813, 790 P.2d 228.

Error of law appearing on the face of arbitration award is one that is recognizable from the language of the award. Westmark Properties, Inc. v. McGuire (Wash.App.1989) 53 Wash.App. 400, 766 P.2d 1146.

In order for court to vacate an award under provision of this section, providing that where arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made, the award must on its face show the adoption of an erroneous rule or mistake in applying the law. Lent's, Inc. v. Santa Fe Engineers, Inc. (1981) 29 Wash. App. 257, 628 P.2d 488.

Arbitrators, when acting under broad authority granted them by both agreement of parties and statutes, become judges of both law and facts, and, unless award on its face shows their adoption of erroneous rule, or mistake in applying law, award will not be vacated or modified. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

Arbitrators to whom a contract dispute is submitted under the terms of a contract determine all questions of fact and law, and any award rendered by them is to be vacated upon judicial review pursuant to provision of this section only when, on its face, the award reflects the adoption of an erroneous rule of law or a clear mistake in applying the law. Moen v. State (1975) 13 Wash.App. 142, 533 P.2d 862, appeal after remand 17 Wash.App. 35, 560 P.2d 728.

Stipulation, after award of arbitrators and exceptions thereto, between parties that matter should be settled in accordance with "findings" of board of arbitration, was agreement that facts found should stand unquestioned but did not preclude exceptions thereto for error of law, where there was no evidence of ambiguity or of what was intended. O'Rourke Brothers, In re (1925) 136 Wash. 490, 240 P. 673.

Failure of arbitrators to determine all questions of law involved is error of law, correctible only by appeal from judgment, and not by motion to vacate judgment. McElroy v. Hopper (1912) 70 Wash. 347, 126 P. 925.

Award will not be set aside on account of error in law, even where arbitrators are required to decide according to strict rules of law, if error complained of is not plain, or if point of law is doubtful one. School Dist. v. Sage (1896) 13 Wash. 352, 43 P. 341.

6. Unfairness

Fact that one arbitrator and his law firm had represented and were representing insurers in unrelated matters, if rising to level of "evident partiality" set forth in this section, was not a basis for vacating decision of arbitrators in dispute with insureds over amount of uninsured motorist coverage under two policies in absence of evidence that arbitrator's representation of insurers in unrelated matters had resulted in prejudice to substantial rights of insureds. Schreifels v. Safeco Ins. Co. (1986) 45 Wash. App. 442, 725 P.2d 1022.

Arbitration award would not be vacated absent showing that appellants were deprived of full and fair hearing or that their right to submit evidence to arbitrators was in some way curtailed. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

Award by state highway commissioner, named as arbitrator in state road contract, will not be set aside because of his official interest where there is no showing that he acted arbitrarily or capriciously. State ex rel. Noble v. Bowlby (1913) 74 Wash. 54, 132 P. 723.

Where no bias or prejudice is found, it is proper to refuse to vacate award by arbitration. McCann v. Alaska Lbr. Co. (1912) 71 Wash. 331, 128 P. 663.

Award of arbitrators although not fraudulent nor made with intent of acting unfairly in matter, may be set aside by court if it appears to be unfair to one of parties because action of arbitrators was based on insufficient knowledge of matters in controversy and they refused to receive information to guide them properly in discharge of their duties. McDonald v. Lewis (1897) 18 Wash. 300, 51 P. 387.

Note 6

Award by appraisers selected to appraise loss incurred by insured should be set aside when it was grossly inadequate and appraiser selected by insurance company exercised controlling influence over other appraiser and umpire, and proceeded as though he was engaged solely in interests of insurance company for purpose of getting award made as low as possible, instead of acting as disinterested and impartial judge. Glover v. Rochester-German Ins. Co. (1895) 11 Wash. 143, 39 P. 380.

7. Failure to raise issue before arbitrator

Arbitration of labor dispute cannot be repudiated for domination of one member where no objection was made at hearing and such domination cannot reasonably be concluded from record. Gord v. Harmon (F.S.) & Co. (1936) 188 Wash. 134, 61 P.2d 1294.

Action to cancel judgment upon arbitration and award could not be maintained under former statute upon allegations of unfairness, prejudice and manipulation or other grounds that could have been reached by statutory exceptions on trial before arbitrators, where exceptions where wholly omitted and no relief sought under statute. Dickie Mfg. Co. v. Sound Const. & Eng. Co. (1916) 92 Wash. 316, 159 P. 129.

8. Record

Arbitration award consists of statement of the outcome, and statement of reasons for the award is not part of the award, for purposes of determining whether grounds for vacation of the award appear on the face of the award. Westmark Properties, Inc. v. McGuire (Wash.App.1989) 53 Wash.App. 400, 766 P.2d 1146.

Arbitrator's letter to party involved in arbitration setting forth reasons for the previously delivered award could not be considered as a part of the award in determining whether award was erroneous as a matter of law where letter was not a part of the award nor a paper delivered with the award, but was made in response to party's request for reasons supporting the award. Lent's, Inc. v. Santa Fe Engineers, Inc. (1981) 29 Wash. App. 257, 628 P.2d 488.

9. Evidence

Under former provision, intentional wrong and error must appear on face of award, and could not be shown by admission of evidence. Hatch v. Cole (1924) 128 Wash. 107, 222 P. 463, affirmed 130 Wash. 706, 226 P. 1119.

10. Presumptions and burden of proof

Burden of showing fraud or other matters sufficient to set aside arbitration award is on party seeking to set award aside and if that burden is not sustained, award will be affirmed. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

11. Attorney fees

Arbitrators exceeded their powers and ignored express language of contract in failing to award attorney fees to prevailing party in arbitration of dispute arising from sale of a furnace. Agnew v. Lacey Co-Ply (1982) 33 Wash.App. 283, 654 P.2d 712.

7.04.170. Modification or correction of award by court

In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

(1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.

(2) Where the arbitrators have awarded upon a matter not submitted to them.

(3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof.

Enacted by Laws 1943, ch. 138, § 17.

Historical and Statutory Notes

Source:

RRS § 430–17.

Library References

Arbitration ⟹73.9.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 168.

Notes of Decisions

In general 1
Interest 2

1. In general

As general rule, arbitrators, when acting under authority granted them by both agreement of parties and statutes, become judges of both law and facts and, unless award on its face shows adoption of erroneous rule or mistake in applying law, award will not be vacated or modified. Kennewick Educ. Ass'n v. Kennewick School Dist. No. 17 (1983) 35 Wash.App. 280, 666 P.2d 928.

Courts will not review arbitration award unless errors of law or fact are apparent on face of it, since arbitrators acting under broad authority granted them by parties' agreement and statutes become judges of both law and fact; and, even where review is indicated, courts will not vacate or modify award unless parties were deprived of full and fair hearing, or of their right to submit evidence, or unless arbitrators' actions came within proscriptions of this section or § 7.04.160. Northern State Constr. Co. v. Banchero (1963) 63 Wash.2d 245, 386 P.2d 625.

Where common-law arbitrator, with unlimited authority to determine both facts and law, but without any power to review his mistake, recited in his award that he followed and applied certain method or rule of law, and it was apparent that he made mistake in applying law or facts under method set out, court had power to correct mistake in suit brought for that purpose. Carey v. Herrick (1928) 146 Wash. 283, 263 P. 190.

If, upon consideration of evidence, arbitrator makes mistake of fact not appearing on face of record, court will not inquire into it. Puget Sound Bridge & Dredg. Co. v. Frye (1927) 142 Wash. 166, 252 P. 546.

2. Interest

Trial court erred in adding prejudgment interest to arbitration award, in dispute between owner of apartment properties and manager; inasmuch as trial court was foreclosed from going beyond the face of the award, it had no basis for determining whether amount awarded met the test for prejudgment interest. Westmark Properties, Inc. v. McGuire (Wash.App.1989) 53 Wash.App. 400, 766 P.2d 1146.

7.04.175. Modification or correction of award by arbitrators

On application of a party or, if an application to the court is pending under RCW 7.04.150, 7.04.160, or 7.04.170, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in RCW 7.04.170(1) and (3). The application shall be made, in writing, within ten days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that objections, if any, must be served within ten days from the notice. The arbitrators shall rule on the application within twenty days after such application is

made. Any award so modified or corrected is subject to the provisions of RCW 7.04.150, 7.04.160, and 7.04.170 and is to be considered the award in the case for purposes of this chapter, said award being effective on the date the corrections or modifications are made. If corrections or modifications are denied, then the award shall be effective as of the date the award was originally made.

Enacted by Laws 1985, ch. 265, § 2.

7.04.180. Notice of motion to vacate, modify, or correct award—Stay

Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after a copy of the award is delivered to the party or his attorney. Such motion shall be made in the manner prescribed by law for the service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

Enacted by Laws 1943, ch. 138, § 18.

Historical and Statutory Notes

Source:

RRS § 430-18.

Library References

Arbitration ⇐77.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 161 to 167, 177.

Notes of Decisions

Award 1
Limitations 2

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1. Award

Arbitration decision which determined amount of total damages suffered by injured motorist but did not determine extent of underinsured motorist (UIM) insurer's liability did not constitute "award," so as to trigger three-month limitation on moving to vacate, modify, or correct arbitration award. Dougherty v. Nationwide Ins. Co. (1990) 58 Wash. App. 843, 795 P.2d 166, review denied 116 Wash.2d 1009, 805 P.2d 813.

2. Limitations

Because former employee did not file his action against his former employer alleging breach of collective bargaining agreement until eight months after Supreme Court held that a state limitation period for vacation of an arbitral award controlled such an action, the action was untimely under Washington's three-month statute of limitations (this section). Scoggins v. Boeing Co., Inc. (C.A. 1984) 742 F.2d 1225.

7.04.190. Judgment—Costs

Upon the granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith. Costs of the application and of the proceedings subsequent thereto, not exceeding twenty-five dollars and disbursements, may be awarded by the court in its discretion.

Enacted by Laws 1943, ch. 138, § 19.

Historical and Statutory Notes

Source:

RRS § 430-19.

Library References

Arbitration ⇐77(7).
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 164, 177.

Notes of Decisions

Attorney fees 1

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1. Attorney fees

A personal injury protection endorsement which stated that insurance company would not be responsible for attorney's fees on any sums which it was able to recover through intercompany arbitration, involved no deception and, furthermore, arbitration agreement and rules of arbitration neither conflicted with nor modified insurance policy and, thus, endorsement to policy did not violate the Washington Consumer Protection Act, § 19.86.010 et seq. Richter, Wimberley & Ericson, P.S. v. Honore (1980) 29 Wash.App. 507, 628 P.2d 1311.

Where arbitrators entered award in favor of lessor after lessee had defaulted on payments as provided in equipment lease, but award provided that attorney fees would be borne by respective parties, court of appeals enforced arbitration award against lessee according to its terms, and, therefore, declined to award attorney fees and costs to lessor. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

7.04.200. Judgment roll—Docketing

Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment roll:

(1) The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award.

(2) The award.

(3) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

(4) A copy of the judgment.

The judgment may be docketed as if it was rendered in an action.
Enacted by Laws 1943, ch. 138, § 20.

Historical and Statutory Notes

Source:
RRS § 430–20.

Library References

Arbitration ⟹84.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 145 to 148.

7.04.210. Effect of judgment

The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.
Enacted by Laws 1943, ch. 138, § 21.

Historical and Statutory Notes

Source:
RRS § 430–21.

Library References

Arbitration ⟹80 to 84.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 123 to 155.

Notes of Decisions

In general 1
Out-of-state awards 2
Superfluous findings 3
Vacation of judgment 4

1. In general

Award made by arbitrator agreed on, filed in office of clerk of court, and judgment having been entered thereon by court, was bar to action brought by one of the parties who refused to submit disputed matter to arbitration, even though such action had been instituted prior to notice from adverse party of submission of matter to arbitration under their agreement. Zindorf Const. Co. v. Western American Co. (1901) 27 Wash. 31, 67 P. 374.

Award by arbitrators, when fairly and honestly made upon due consideration of all evidence before them, is conclusive and binding upon parties. School Dist. v. Sage (1896) 13 Wash. 352, 43 P. 341.

2. Out-of-state awards

Written agreement for arbitration and award, not affecting title to real property in this state, good as common-law award and valid in state where made, will be enforced in this state, although it was not made matter of record nor judgment entered upon it, as required of awards in this state. Taylor v. Basye (1922) 119 Wash. 263, 205 P. 16.

3. Superfluous findings

Findings of fact which relate to matters which were submitted to arbitration and were not before court will not invalidate judgment confirming arbiter's

award by their mere presence, but will be considered superfluous. Olympian Stone Co. v. MacDonald Constr. Co. (1969) 1 Wash.App. 410, 461 P.2d 589.

4. Vacation of judgment

Judgment on award, unappealed from, is conclusive on party to arbitration and cannot be attacked by motion to vacate. McElroy v. Hooper (1912) 70 Wash. 347, 126 P. 925.

7.04.220. Appeal

As appeal may be taken from any final order made in a proceeding under this chapter, or from a judgment entered upon an award, as from an order or judgment in any civil action.
Enacted by Laws 1943, ch. 138, § 22.

Historical and Statutory Notes

Source:
RRS § 430–22.

Library References

Arbitration ⟹73.2.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 161.
Appeals permitted from superior court decisions, when, provisions relating to arbitration, see Wash.Prac. vol. 2A, Orland and Tegland, RAP 2.2, §§ 3061, 3062.

United States Supreme Court

Limitations, labor relations, discharged employee's underlying claim against an employer, on which he brought suit under Labor Management Relations Act [29 U.S.C.A. §§ 185, 185(a)], was based upon collective-bargaining agreement, a contract, but indispensable predicate for such action was not a showing under traditional contract law that discharge was breach of collective bargaining agreement but was, instead, a demonstration that union breached its duty of fair representation, and action was thus more analogous to action to vacate arbitration award than to straight contract action, see United Parcel Service, Inc. v. Mitchel (1981) 101 S.Ct. 1559, 451 U.S. 56, 67 L.Ed.2d 732.

Notes of Decisions

In general 1
Appealable orders 2
Attorney fees 4
Scope of review 3

1. In general

Parties may present for appellate review judgment on arbitration award entered against them, and on appeal they may challenge jurisdiction of trial court to entertain arbitration proceedings for lack of binding arbitration agreement or because disputes are not arbitrable under the agreement. Teufel Constr. Co. v. American Arbitration Assn. (1970) 3 Wash.App. 24, 472 P.2d 572.

2. Appealable orders

Order compelling arbitration is not final order, and, accordingly is not appealable. Teufel Constr. Co. v. American Arbitration Assn. (1970) 3 Wash.App. 24, 472 P.2d 572.

Order to proceed with arbitration is not appealable. All-Rite Contracting Co. v. Omey (1947) 27 Wash.2d 898, 181 P.2d 636.

When arbitration of differences between parties failed for any reason, superior court was clothed with full jurisdiction to proceed to final determination of controversy, and order of such court setting aside award of arbitrators was not such final order as would sustain

appeal. Tacoma R. & Motor Co. v. Cummings (1892) 5 Wash. 206, 31 P. 747, 33 P. 507.

3. Scope of review

Court of Appeals would decline to address issue whether absorption of new energy audit positions into bargaining unit would violate public policy by imposing unionization without election where record did not reveal how energy audit positions would be affected by arbitrator's decision favorable to union, whether union election is always necessary if worker is summarily brought into union, or whether court should refuse to enforce arbitration before arbitrator has had opportunity to decide question. Local Union No. 77, Intern. Broth. of Elec. Workers v. Public Utility Dist. No. 1, Grays Harbor County (1985) 40 Wash. App. 61, 696 P.2d 1264.

Court will not review arbitration award unless errors of law or fact are apparent on face of award. Keen v. IFG Leasing Co. (1980) 28 Wash.App. 167, 622 P.2d 861.

Court of appeals could not properly consider question of whether plaintiff waived his right to enforce arbitration clause by filing federal securities action, since dismissal by summary judgment on basis of collateral estoppel assumed there were no material facts in dispute. Beagles v. Seattle-First Nat. Bank (1980) 25 Wash.App. 925, 610 P.2d 962.

Court's review of arbitration proceeding is limited to whether or not statutory grounds, as specified in § 7.04.160, exist to vacate award, regardless of whether or not there were any violations of any American Arbitration Association rules. St. Paul Ins. Cos. v. Lusis (1971) 6 Wash. App. 205, 492 P.2d 575.

When arbitrators are acting within authority granted them by agreement of parties and this chapter to become judges of both law and facts, court should not modify or vacate moderators' award unless award on its face shows adoption of erroneous rule or mistake in applying law. Thorgaard Plumbing & Heating Co. v. King County (1967) 71 Wash.2d 126, 426 P.2d 828.

Error of law or fact which court is empowered to review must be error appearing on face of award. Puget Sound Bridge & Dredging Co. v. Frye (1927) 142 Wash. 166, 252 P. 546.

Findings that there was no dispute between parties calling for arbitration, is not sustained by evidence, where there was clear dispute in pleadings, and defendant's officers testified to their faithful performance of contract and its breach by plaintiff, and plaintiff retaliated by attempting to show defendant's nonperformance and its termination by such breach, and upon second cause of action, defendant offered evidence of amount due and its nonpayment, while plaintiff offered evidence of breach and sought to counterclaim for damages. Herring-Hall-Marvin Safe Co. v. Purcell Safe Co. (1914) 81 Wash. 592, 142 P. 1153, affirmed on rehearing 86 Wash. 694, 150 P. 1162.

4. Attorney fees

Shareholders and trustees of assets of utility company were not entitled to attorney fees on appeal, based on sale and arbitration agreement, where agreement spoke of action to specifically compel commissioners to increase water rates to cover payments to shareholders and trustees, while instant action was originally to show cause why district should not be required to pay shareholders and trustees the initial $30,000 down payment, not to compel commissioners to make possible payments to shareholders and trustees. Liberty Lake Sewer Dist. No. 1 v. Liberty Lake Utilities Co., Inc. (1984) 37 Wash.App. 809, 683 P.2d 1117.

CHAPTER 7.06

MANDATORY ARBITRATION OF CIVIL ACTIONS

Section

7.06.010. Authorization.
7.06.020. Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support.
7.06.030. Implementation by supreme court rules.
7.06.040. Qualifications, appointment and compensation of arbitrators.
7.06.050. Decision and award—Appeals—Trial—Judgment.
7.06.060. Costs and attorney's fees.
7.06.070. Right to trial by jury.
7.06.900. Severability—1979 c 103.
7.06.910. Effective date—1979 c 103.

Library References

Court rules, mandatory arbitration, see Wash.Prac. vol. 4A, Orland and Tegland, MAR 1.1 et seq.
Evidence rules, applicability in mandatory arbitration hearings, see Wash.Prac. vol. 5B, Tegland, § 515.
Judges, prohibition on testimony, applicability to arbitrators, see Wash. Prac. vol. 5A, Tegland, § 222.
Prior statements, admissibility at trial, see Wash.Prac. vol. 5B, Tegland, § 341.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

7.06.010. Authorization

In counties with a population of seventy thousand or more, the superior court of the county, by majority vote of the judges thereof, or the county legislative authority may authorize mandatory arbitration of civil actions under this chapter. In all other counties, the superior court of the county, by a majority vote of the judges thereof, may authorize mandatory arbitration of civil actions under this chapter.

Enacted by Laws 1979, ch. 103, § 1, eff. July 1, 1980. Amended by Laws 1984, ch. 258, § 511, eff. July 1, 1984; Laws 1991, ch. 363, § 7.

Historical and Statutory Notes

Laws 1984, ch. 258, § 511, rewrote the section, which previously read:

"The superior court of a county by majority vote of the judges thereof may authorize mandatory arbitration of civil actions under this chapter."

Laws 1991, ch. 363, § 7, in the first sentence, substituted "with a population of seventy thousand or more" for "of the second class and larger".

Purpose—Captions not law—Laws 1991, ch. 363: See Historical and Statutory Notes following § 2.32.180.

Court Improvement Act of 1984—Effective dates—Severability—Short title—Laws 1984, ch. 258: See Historical and Statutory Notes following § 3.30.010.