

May 1948

Arbitration and Award–Validity of Award–Scope of Submission Agreement

P. N. B.

West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

P. N. B., *Arbitration and Award–Validity of Award–Scope of Submission Agreement*, 51 W. Va. L. Rev. (1948).

Available at: <https://researchrepository.wvu.edu/wvlr/vol51/iss2/5>

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.

CASE COMMENTS

ARBITRATION AND AWARD—VALIDITY OF AWARD—SCOPE OF SUBMISSION AGREEMENT.—A long term contract for sale of gas to *D* from *P* provided for an adjustment of sale price every five years by agreement, or in case of disagreement, the question was to be submitted to arbitrators, who were to “base their decision upon the then reasonable market value of gas in that territory . . .” The parties failing to agree, the question was submitted to three arbitrators, who considered prices paid for gas in the specific area covered by the contract as well as in counties abutting but outside the specific area. *D* refused to abide by an award apparently based on these “outside” prices. *P* brings suit for specific performance of the award and money judgment thereon. *Held*, that the award was within the scope of the submission agreement. In determining a reasonable market value for a commodity in an area where contract prices for that commodity were “pegged” by old contracts and business practices, it was competent to consider contract prices in adjacent areas to determine a reasonable market value for the commodity within the specific area. *Columbian Fuel Corp. v. United Fuel Gas Co.*, 72 F. Supp. 843 (D.C.S.D. W. Va. 1947). The holding accords with general principles of law relating to validity of awards attacked as not within the scope of the submission. Arbitrators get their authority and powers from the submission and any award not rendered within that authority and power is invalid; but since the validity of each award, when attacked on this ground, will depend upon the particular submission in the case, it is not possible to formulate a hard and fast rule to govern all cases. A review of past decisions, however, serves to show how far courts have gone to uphold an award or to set it aside. Upon the question of whether an award is within the terms of submission all fair presumptions are made in favor of the award and if on any fair presumption the award may be brought within the submission it will be sustained, *Eureka Pipe Line Co. v. Simms*, 62 W. Va. 628, 59 S. E. 618 (1907); *Republic of Colombia v. Cauca Co.*, 106 F. 337 (C. C. W. Va. 1901), and awards are to be liberally construed so as to give effect and operation to the intent of the arbitrators, where it can be done. *Wheeling Gas Co. v. Wheeling*, 5 W. Va. 448 (1872); *Fluharty v. Beatty*, 22 W. Va. 698 (1883); *Eureka Pipe Line Co. v. Simms*, *supra*. If the arbitrators have fairly executed their submission, their award will not be set aside because it is exorbitant. *Eureka Pipe Line Co. v. Simms*, *supra*; *cf. Republic of Colombia v. Cauca Co.*, *supra*; see *Dickinson v. Chesapeake & O. R. R.*, 7 W. Va. 390, 435 (1873). An award which includes matters not submitted to the arbitrators will be declared invalid, *Swann v. Dunn*, 4 W.

Va. 368 (1870); *Dunlap v. Campbell*, 5 W. Va. 195 (1872); *Austin v. Clark*, 8 W. Va. 236 (1875); *Simmons v. Simmons*, 85 W. Va. 25, 100 S. E. 743 (1919), unless the part in excess can be clearly separated from that within the submission, in which case the latter will stand. *Republic of Colombia v. Cauca Co.*, *supra*. Conversely, an award which does not decide all matters submitted is invalid, *Bean v. Bean*, 25 W. Va. 604 (1885); but *cf. Mutual Improvement Co. v. Merchants & Bus. Men's Mut. Fire Ins. Co.*, 112 W. Va. 291, 164 S. E. 256 (1932) (arbitrators to determine fire damage to party wall did not have to stipulate insured's interest in party wall). Under a submission of several matters which requires, either specially or impliedly, that a separate award be rendered for each matter, the award is invalid if it embodies all in one general award. *Hines v. Fisher*, 61 W. Va. 565, 56 S. E. 904 (1907). Unless the submission restricts the arbitrators to the use of "legally admissible" evidence, an award will not be set aside because "illegal" evidence is received by the arbitrators in the course of their proceedings, unless it plainly appears that the award was based on such evidence. *Eureka Pipe Line Co. v. Simms*, *supra*; *Brodhead-Garrett Co. v. Davis Lumber Co.*, 97 W. Va. 165, 124 S. E. 600 (1924); see *Boomer Coke & Coal Co. v. Osenton*, 101 W. Va. 683, 694, 133 S. E. 381 (1926). The presumption is that the award rests on proper evidence. *Eureka Pipe Line Co. v. Simms*, *supra*; but *cf. Austin v. Clark*, 8 W. Va. 236 (1875). Also, when arbitrators are not restricted to legal principles, an award based on mistake of law is not invalid. *Boomer Coke & Coal Co. v. Osenton*, *supra*. Even when they intend to decide by law, a mistake of law on a doubtful point will not invalidate the award for to do so the mistake must be contrary to well settled law. *Mathews v. Miller*, 25 W. Va. 817 (1885). When the submission prescribes, expressly or by implication, a procedure for determining an award, the award will be declared invalid if that procedure is not followed. *Dickinson v. Chesapeake & O. R. R.*, *supra* (value found in stock instead of money); *Providence Washington Ins. Co. v. Morgantown Board of Education*, 49 W. Va. 361, 38 S. E. 679 (1900) (fire damage not calculated according to policy terms); *Raleigh Coke & Coal Co. v. Mankin*, 83 W. Va. 54, 97 S. E. 299 (1918) (failure to estimate timber and value properly); *Bailey v. Triplett*, 83 W. Va. 169, 98 S. E. 166 (1919) (property line); *Goff v. Goff*, 78 W. Va. 423, 89 S. E. 9 (1916) (failure to use deeds as controlling in determining dividing lines). All arbitrators must join in an award, unless otherwise implied or expressed in the submission. *Wheeling Gas Co. v. Wheeling*, *supra*; *Stewart v. Monongalia County Court*, 99 W. Va. 640, 130 S. E. 271 (1925); *cf. Republic of Colombia v. Cauca Co.*, *supra*. However,

when the submission calls for two arbitrators, who are to select an umpire in case of disagreement, an award rendered by two of the three is valid, *Stiringer v. Toy*, 33 W. Va. 86, 10 S. E. 26 (1889); *cf. Rogers v. Corrothers*, 26 W. Va. 238 (1885), but that one selected acting as an original arbitrator or appraiser in making an award has been held reason to vitiate the award. *Providence Washington Ins. Co. v. Morgantown Board of Education*, *supra* (alternative holding).

P. N. B.

CONSTITUTIONAL LAW—SEPARATION OF POWERS—ISSUANCE OF MUNICIPAL CHARTER BY CIRCUIT COURT.—A group of citizens of the community of Chesapeake petitioned the circuit court of Kanawha County to issue a certificate of incorporation to the town of Chesapeake as a municipal corporation, under the provisions of W. VA. REV. CODE (Michie, 1943) c. 8, art. 2, the provisions thereof being satisfied. The circuit court dismissed the petition, holding that W. VA. CONST., Art. V, made the statute void and unconstitutional in that it required a circuit court to perform a purely legislative function. *Held*, on writ of error, constitutional, affirming a line of decisions beginning with *In re Town of Union Mines*, 39 W. Va. 179, 19 S. E. 398 (1894), on grounds of public policy. *In re Town of Chesapeake*, 45 S. E. (2d) 113 (W. Va. 1947).

The delegation of power to the courts to issue charters to municipal corporations has been the subject of much dissension among the courts of the various states. Some have held the delegation in this type of case void in all instances as a violation of the doctrine of separation of powers. *Udall v. Severn*, 53 Ariz. 65, 79 P. (2d) 347 (1938). Others have held it valid if there is no exercise of discretion on the part of the court, but only a determination of the facts as to compliance with the statute, the court performing a ministerial duty in issuing the charter. *State ex rel. Fire District v. Smith*, 353 Mo. 807, 184 S. W. (2d) 593 (1945). Still others, as in the instant case, hold that although a certain amount of discretion is involved, it is a valid delegation which does not violate the constitution. *Board of Supervisors v. Duke*, 113 Va. 94, 73 S. E. 456 (1912); *Morris v. Taylor*, 70 W. Va. 618, 74 S. E. 872 (1912). It had been apprehended that the application of the "new and strict" rule, see *In re Town of Chesapeake*, 45 S. E. 113, 117 (W. Va. 1947), of *Hodges v. Public Service Comm.*, 110 W. Va. 649, 159 S. E. 834 (1931), might cause a repudiation of the results in situations where comparable delegations of power had theretofore been sustained. Davis, *Judicial Review of Administrative Action in West Virginia—A Study in Separation of*