

SUPREME COURT OF NORTH DAKOTA

Gratech Company, Ltd. v. North Dakota Department of Transportation

676 N.W.2d 781 (N.D. 2004) · No. No. 20030203 · Decided March 23, 2004

SUMMARY

The Supreme Court of North Dakota affirmed the dismissal of Gratech Company’s application to vacate an arbitration award arising from highway construction contracts with the North Dakota Department of Transportation. The court held that Gratech’s failure to provide the written notice required by statute and contract waived its claims for additional compensation and prevented arbitration of all but one claim. The court also declined to decide whether a heightened standard of review applies to questions of law in statutorily mandated arbitration because the result was the same under either standard.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Maring, Justice; Carol Ronning Kapsner; Gerald W. Vande Walle; William A. Neumann; Dale V. Sandstrom; Maring
JURISDICTION	North Dakota
DECIDED	March 23, 2004
DOCKET	No. 20030203
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gratech appealed from a district court judgment affirming an arbitration award and dismissing Gratech's application to vacate the award.
STANDARD OF REVIEW	An arbitration award may be vacated on its merits only if it is completely irrational. Under that standard, an arbitrator's mistake of fact or law is insufficient to overturn the award. The court declined to decide whether a heightened or de novo standard applies to questions of law in statutorily mandated arbitration because the award was correct under either standard.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Gratech Company, Ltd. v. North Dakota Department of Transportation

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QUESTIONS PRESENTED

1. Whether the arbitration panel correctly applied the completely irrational standard of review to the arbitration award.
2. Whether Gratech's failure to provide written notice of its claims under N.D.C.C. § 24-02-26.1 and the contract provisions barred arbitration and waived its right to seek additional compensation.
3. Whether additional work caused by materially differing soil conditions was subject to the statutory and contractual notice requirements.

HOLDINGS

1. The court declined to resolve whether questions of law in statutorily mandated arbitration should receive de novo review because the arbitration panel reached the correct result under either the completely irrational standard or a heightened standard.
2. A contractor's failure to provide the written notice required by N.D.C.C. § 24-02-26.1 and the applicable contract provisions waives the contractor's right to claim additional compensation and constitutes failure of a condition precedent to demanding arbitration.
3. Additional excavation, subcutting, plowing, discing, and drying required because soil conditions differed from the plans and contract were not work provided for in the original contract and therefore required written notice before additional compensation could be claimed or arbitrated.

KEY QUOTATIONS

“Gratech's failure to give written notice as required by statute and the contract constituted a waiver of its right to claim additional compensation and a failure of the condition precedent to demand arbitration of the matter.” (785-786)

“Under the completely irrational standard, an arbitrator's mistake in determining the facts or interpreting the law is not a sufficient ground for overturning the award.” (782)

FACTUAL BACKGROUND

The North Dakota Department of Transportation awarded Flickertail Paving and Supply, LLC two highway construction contracts, and Flickertail subcontracted grading work to Gratech. Gratech encountered poor soil conditions that allegedly required additional subcutting, plowing, discing, drying, and excavation. Gratech conceded that it did not provide contemporaneous written notice of its intent to seek additional compensation under the statute or the contracts, although Flickertail did provide notice.

PROCEDURAL HISTORY

Gratech and Flickertail separately sought additional compensation from the North Dakota Department of Transportation for work performed on highway construction projects. Their claims were consolidated in arbitration. The arbitrators awarded Gratech \$55,651 on one claim but concluded that its remaining claims were barred because Gratech failed to provide the required written notice of claim. The district court affirmed the arbitration award and dismissed Gratech's application to vacate it.

DISPOSITION

affirmed

CASES CITED

- John T. Jones Constr. Co. v. City of Grand Forks, 2003 ND 109, 665 N.W.2d 698
- Superpumper, Inc. v. Nerland Oil, Inc., 2003 ND 33, 657 N.W.2d 250
- State v. Gratech Co., 2003 ND 7, 655 N.W.2d 417
- Allstate Ins. Co. v. Nodak Mut. Ins. Co., 540 N.W.2d 614 (N.D. 1995)
- American Universal Ins. Co. v. DelGreco, 205 Conn. 178, 530 A.2d 171 (1987)
- Allstate Ins. Co. v. Caltabiano, 74 Conn. App. 49, 809 A.2d 1153 (2002)
- Detroit Auto. Inter-Ins. Exch. v. Gavin, 416 Mich. 407, 331 N.W.2d 418 (1982)
- Johnson v. American Family Mut. Ins. Co., 426 N.W.2d 419 (Minn. 1988)
- Gilder v. Auto-Owners Ins. Co., 659 N.W.2d 804 (Minn. Ct. App. 2003)
- Racine v. AMCO Ins. Co., 605 N.W.2d 773 (Minn. Ct. App. 2000)
- Gratech Co. v. Wold Eng'g, P.C., 2003 ND 200, 672 N.W.2d 672
- Byron's Constr. Co. v. North Dakota State Highway Dep't, 448 N.W.2d 630 (N.D. 1989)
- Johnson Constr., Inc. v. Rugby Mun. Airport Auth., 492 N.W.2d 61 (N.D. 1992)