

SUPREME COURT OF RHODE ISLAND

Aetna Bridge Company v. State of Rhode Island Department of Transportation

795 A.2d 517 (R.I. 2002) · No. No. 99-391-Appeal · Decided April 19, 2002

SUMMARY

The Supreme Court of Rhode Island reviewed a Superior Court judgment confirming an arbitration award in favor of Aetna Bridge Company against the Rhode Island Department of Transportation. The court held that the record was insufficient to determine whether Aetna's claim was an impermissible pass-through claim under the Severin doctrine and that substantive arbitrability was subject to de novo review. It vacated the judgment and remanded for a new evidentiary hearing on confirmation and vacatur of the award.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Bourcier, J.; Williams, C.J.; Lederberg, J.; Flanders, J.; Goldberg, J.
JURISDICTION	Rhode Island
DECIDED	April 19, 2002
DOCKET	No. 99-391-Appeal
DISPOSITION	vacated
PROCEDURAL POSTURE	The Rhode Island Department of Transportation appealed from a Superior Court judgment confirming an arbitrator's award in favor of Aetna and denying DOT's motion to vacate the award.
STANDARD OF REVIEW	Whether a dispute is substantively arbitrable is a question of law reviewed de novo and under a broader standard than the arbitrator's decision on the merits.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential.
PARTIES	State of Rhode Island Department of Transportation v. Aetna Bridge Company

TOPICS

- arbitration
- government contracts
- construction law
- appellate procedure
- subject matter jurisdiction

PRACTICE AREAS

construction law

government contracts

arbitration

appellate procedure

QUESTIONS PRESENTED

1. Whether DOT preserved its challenge to the substantive arbitrability of Aetna's alleged pass-through claim by participating in the arbitration.
2. Whether substantive arbitrability is subject to de novo judicial review rather than the deferential review ordinarily applied to an arbitrator's merits decision.
3. Whether an alleged pass-through claim by a general contractor is arbitrable when the contractor has no concomitant liability to the subcontractor.
4. Whether the Superior Court could properly confirm or vacate the arbitrator's award when the arbitration record was unavailable and the arbitrator issued only a bare two-sentence award.

HOLDINGS

1. A party may preserve a substantive-arbitrability challenge for later judicial determination even if it participates in the arbitration after raising the issue; DOT was not required to object at the outset of arbitration because substantive arbitrability is treated as equivalent to subject-matter jurisdiction and may be raised at any time.
2. The issue whether a dispute is substantively arbitrable is a question of law subject to de novo review, rather than the usual deferential review applied to an arbitrator's merits decision.
3. Rhode Island adopts the Severin doctrine: if a general contractor's claim against an owner is a pass-through claim brought on behalf of a subcontractor and the general contractor has no concomitant liability to that subcontractor, the claim is not arbitrable.
4. When the arbitration record is unavailable and the arbitrator's award does not reveal the issues considered or the basis for the decision, the Superior Court must conduct a new evidentiary hearing to determine substantive arbitrability rather than simply confirm the award.

KEY QUOTATIONS

"This Court has held that "the issue of whether a dispute is arbitrable concerns a question of law and is subject to a broader standard of review than is the arbitrator's decision on the merits."" (523)

"We conclude from our de novo review of the substantive arbitrability issue before us, and from our review of the respective contentions of the parties to this appeal, that if Aetna's claim against DOT indeed was a "pass-through" claim with no concomitant liability to Aetna, then it would not be arbitrable pursuant to the doctrine enunciated in Severin, a doctrine to which we now formally subscribe." (524)

FACTUAL BACKGROUND

DOT contracted with Aetna to reconstruct and retrofit a Pawtucket bridge, including installation of a catwalk access inspection system. Aetna subcontracted structural-steel work to L.B. Foster, which subcontracted detailing work to Alpha Structures; those relationships and the alleged liquidation agreement were not disclosed

or produced in the proceedings. After Alpha incurred additional costs allegedly caused by inadequate design specifications, Aetna sought payment from DOT, ultimately presenting what DOT contended was a pass-through claim even though Aetna acknowledged that it had paid Foster the agreed lump sum and had no outstanding liability to Foster.

PROCEDURAL HISTORY

Aetna demanded arbitration under the Public Works Arbitration Act after DOT refused to pay a claim concerning additional costs associated with the bridge catwalk design and detailing work. The arbitrator awarded Aetna \$67,845.22. The Superior Court confirmed the award and denied DOT's motion to vacate, prompting DOT's appeal. Because the arbitration record was unavailable and the award contained no findings, the Supreme Court vacated the judgment and remanded for a new evidentiary hearing on substantive arbitrability.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The Superior Court must conduct a new evidentiary hearing on Aetna's motion to confirm and DOT's motion to vacate. If the claim is determined to be a pass-through claim without the required concomitant liability, the court must deny confirmation and grant vacatur; if it is not a pass-through claim, the court must confirm the award and deny vacatur. The parties and court are not restricted to the record before the arbitrator.

CASES CITED

- Lutz Engineering Co. v. Sterling Engineering & Construction Co., 112 R.I. 605, 314 A.2d 8 (1974)
- Severin v. United States, 99 Ct. Cl. 435 (1943), cert. denied, 322 U.S. 733 (1944)
- State v. Local 2883, American Federation of State, County and Municipal Employees, 463 A.2d 186, 189 (R.I. 1983)
- State Department of Mental Health, Retardation and Hospitals v. Rhode Island Council 94, 692 A.2d 318 (R.I. 1997)
- Rhode Island Brotherhood of Correctional Officers v. State Department of Corrections, 707 A.2d 1229, 1235 (R.I. 1998)
- Providence Teachers' Union Local 958-American Federation of Teachers v. Providence School Committee, 433 A.2d 202, 205 (R.I. 1981)
- Clark-Fitzpatrick, Inc./Franki Foundation Co. v. Gill, 652 A.2d 440 (R.I. 1994)
- Ruff v. Metropolitan Property and Liability Insurance Co., 508 A.2d 672, 673 (R.I. 1986)
- Department of Transportation v. Claussen Paving Co., 246 Ga. 807, 273 S.E.2d 161 (1980)