BUSINESS COURT OF TEXAS, FIRST DIVISION

BNSF Railway Company v. Level 3 Communications, LLC

BNSF Railway, 2026 Tex. Bus. 8 (Business Court of Texas First Division 2026) · No. 25-BC01A-0025 · Decided February 24, 2026

SUMMARY

The Texas Business Court, First Division, denied BNSF Railway Company's application to vacate an arbitration award and granted Level 3 Communications, LLC's counter-application to confirm it. The court held that the parties' adoption of the AAA Commercial Rules clearly and unmistakably delegated substantive arbitrability questions to the arbitration panel, while applicable law assigned procedural arbitrability questions to the panel as well. The court confirmed the panel's June 2, 2025 final award and denied Level 3's request for additional attorneys' fees because no supporting evidence was presented.

CASE DETAILS

COURT	Business Court of Texas, First Division
WRITING FOR THE COURT	Andrea K. Bouressa
JURISDICTION	Business Court of Texas, First Division
DECIDED	February 24, 2026
DOCKET	25-BC01A-0025
DISPOSITION	other
PROCEDURAL POSTURE	BNSF applied to vacate an arbitration award under the Texas Arbitration Act and the Federal Arbitration Act. Level 3 counter-applied to confirm the award. After a bench trial, the court denied vacatur and confirmed the award.
STANDARD OF REVIEW	Judicial review of an arbitration award is extraordinarily narrow and focuses on the integrity of the arbitration process rather than the propriety of the result. Vacatur is not warranted merely because an arbitrator made a mistake of fact or law; the relevant inquiry is whether the arbitrator acted within the authority granted by the parties' agreement.
PRECEDENTIAL VALUE	Published opinion
PARTIES	BNSF Railway Company v. Level 3 Communications, LLC

TOPICS

arbitration | contracts | commercial litigation | civil procedure

PRACTICE AREAS

Arbitration | Contracts | Commercial litigation | Remedies

QUESTIONS PRESENTED

1. Whether the arbitration panel exceeded its authority by deciding that the renewal-rate dispute was arbitrable and resolving it through arbitration despite contractual provisions concerning negotiation and appraisal.
2. Whether the arbitration panel exceeded its authority by proceeding before completion of the appraisal process or the formal settlement process as alleged conditions precedent to arbitration.
3. Whether the arbitration award should be confirmed under the Texas Arbitration Act and the Federal Arbitration Act.
4. Whether Level 3 was entitled to additional attorneys' fees and costs.

HOLDINGS

1. The arbitration panel had authority to determine whether the renewal-rate dispute was subject to arbitration and to resolve that dispute because the parties incorporated the AAA Commercial Rules, which clearly and unmistakably delegated arbitrability questions to the arbitrator.
2. The arbitration panel, rather than the court, had authority to decide whether the appraisal process and formal settlement process were enforceable or had been satisfied as conditions precedent to arbitration.
3. BNSF failed to establish a statutory ground for vacatur, and the court therefore denied vacatur and confirmed the arbitration award.
4. Level 3 was not entitled to additional attorneys' fees and costs because it presented no evidence of those fees or costs at trial.

KEY QUOTATIONS

> *"And once "the parties have contractually agreed to delegate arbitrability issues to the arbitrator, courts must enforce that agreement.""* (11)

> *""[J]udicial review of an arbitration award is extraordinarily narrow" and "focuses on the integrity of the process, not the propriety of the result.""* (12)

FACTUAL BACKGROUND

BNSF and Level 3 entered a 1998 Master Right-of-Way Agreement allowing Level 3 to install fiber-optic facilities along BNSF railroad segments. The Agreement provided for renewal-rate negotiations, an appraisal process if negotiations failed, a formal dispute-resolution procedure, and binding arbitration for disputes not settled under that procedure. After Level 3 elected to renew and the parties failed to agree on a renewal rate, Level 3 commenced arbitration; the panel stayed the appraisal process and ultimately found that BNSF failed to negotiate in good faith, waived further negotiations and appraisal, and ordered the parties to use a rate previously negotiated by their lead negotiators.

PROCEDURAL HISTORY

The parties arbitrated a dispute concerning the renewal rate and appraisal process under their Master Right-of-Way Agreement. The arbitration panel ruled for Level 3, finding that BNSF failed to negotiate in good faith and had waived the right to pursue further negotiations or the appraisal process. BNSF then sought vacatur in the Texas Business Court, while Level 3 sought confirmation. The court denied BNSF's application, granted Level 3's counter-application, confirmed the June 2, 2025 Final Award, and denied Level 3's request for additional fees and costs.

DISPOSITION

other

CASES CITED

- Moody Nat'l Grapevine MT, LP v. TIC Grapevine 2, LP, 651 S.W.3d 450, 455 (Tex. App.—Houston [14th Dist.] 2022, pet. denied)
- Forest Oil Corp. v. El Rucio Land & Cattle Co., Inc., 518 S.W.3d 422, 431 (Tex. 2017)
- G.T. Leach Builders, LLC v. Sapphire V.P., LP, 458 S.W.3d 502, 520 (Tex. 2015)
- BG Grp., PLC v. Republic of Arg., 572 U.S. 25, 33 (2014)
- Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 81, 84 (2002)
- TotalEnergies E&P USA, Inc. v. MP Gulf of Mex., LLC, 667 S.W.3d 694, 702, 708-09 (Tex. 2023)
- Petrofac, Inc. v. DynMcDermott Petroleum Operations Co., 687 F.3d 671, 675 (5th Cir. 2012)
- Clendening v. Blucora, Inc., No. 05-22-01190-CV, 2024 WL 980359, at *2 (Tex. App.—Dallas Mar. 7, 2024, no pet.) (mem. op.)
- Forest Oil Corp. v. El Rucio Land & Cattle Co., Inc., 446 S.W.3d 58, 75 (Tex. App.—Houston [1st Dist.] 2014), aff'd, 518 S.W.3d 422 (Tex. 2017)
- Ancor Holdings, LLC v. Peterson, Goldman & Villani, Inc., 294 S.W.3d 818, 826 (Tex. App.—Dallas 2009, no pet.)
- Yowell v. Granite Operating Co., 620 S.W.3d 335, 354 (Tex. 2020)

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