CHAPTER 572

ARBITRATION AND AWARD

572.01 WHAT SUBMITTED; SUBMISSION IRREVOCABLE; LABOR DISPUTES.

HISTORY. R.S. 1851 c. 96 ss. 1, 2, 5, 21; 1852 Amend. s. 98; P.S. 1858 c. 85 ss. 1, 2, 5, 21; G.S. 1866 c. 89 ss. 1, 2, 5, 19; G.S. 1878 c. 89 ss. 1, 2, 5, 19; G.S. 1894 ss. 6210, 6211, 6214, 6228; R.L. 1905 s. 4380; G.S. 1913 s. 8016; G.S. 1923 s. 9513; M.S. 1927 s. 9513; 1939 c. 4 s. 39.

It is essential to a statutory submission to arbitration that the agreement shall name all the arbitrators. Holdridge v Stowell, 39 M 360, 40 NW 259; Park Constr. v Ind. School, 209 M 182, 296 NW 475.

Where the agreement as to submission is invalid and it is clear that a statutory arbitration was intended, it cannot have effect as a common law submission. Holdridge v Stowell, 39 M 360, 40 NW 259.

At common law a commission may be revoked at any time before award is made. Holdridge v Stowell, 39 M 360, 40 NW 259; Mpls. & St. L. v Cooper, 59 M 290, 61 NW 143.

Discussion relating to necessity of notice of time and place of meeting. In this case the appraisal made without opportunity afforded to parties to be heard is invalid. Janney v Goehringer, 52 M 428, 54 NW 481.

Common law arbitrations are expressly reserved and recognized in this state. Earle v Johnson, 81 M 472, 84 NW 332.

In the absence of statute otherwise providing, an award of arbitrators made under the standard form of fire insurance policies need not set out in detail the facts made the basis thereof, but may be in the form of general conclusions, with a statement of the gross allowance made. An award in such case is attended with every presumption of validity. McQuaid v Home Ins. 147 M 254, 180 NW 97.

Books and records kept by the insured, not shown to be relevant to the issues, in an action to enforce an award of arbitrators selected pursuant to the provisions of a fire insurance policy, not admissible merely because they were used by the arbitors in determining the amount of loss. Kaufman v Firemens Ins. 168 M 431, 210 NW 289.

Though the arbitration under standard fire policy is conducted somewhat after the fashion of a common law arbitration as distinguished from our statutory arbitration, the agreement in the standard policy arbitration is not revocable but it is a method fixed by statute for finding loss in the event of disagreement and is binding upon insurer and insured. Glidden v Retail Hdwe. Mut. 181 M 518, 233 NW 310.

Under section 572.01 the award may be reviewed if it is "contrary to law and evidence". This permits the district court to vacate an award if there is no evidence to sustain it. It does not give the right to vacate on discretionary powers. Borum v Mpls. St. P. 184 M 126, 238 NW 4.

Where the award of the referees in this partnership case so links matters submitted with matters not submitted to arbitration, that they cannot be separated without prejudice, the court could not sustain a part of the award and set aside other parts. McKay v McKay, 187 M 521, 246 NW 12.

A contract which is the result of collective bargaining between employers and employees must stand upon the same rules of interpretation and enforcement that prevail as to other contracts. Arbitration, particularly in disputes between employers and employees is a favorite of the law, and the award, if any, will ordinarily be final. The instant case must go to decision as one of arbitration at common law. That automatically eliminates certain questions which might be

present if the award were the result of statutory arbitration. Mueller v Chgo. N. W. 194 M 83, 259 NW 798.

Arbitrators being the judges of the law as well as the facts under a general submission at common law, their award, unless successfully impeached upon some permissible ground, is final and conclusive on the parties. An award cannot be successfully impeached upon the ground of error so palpable as to compel a finding that the arbitrators acted with prejudice and bias and not in the exercise of a fair and impartial judgment, where it appears that they decided the questions in dispute either according to well-settled rules of law or according to the equities of the case. Park Construction v Independent School, 216 M 27, 11 NW(2d) 649.

NOTE. Laws 1939, Chapter 439, added the words "or a labor dispute as defined in the Minnesota labor relations act." Minnesota Statutes 1945, Chapter 179.

The rule that the term "employee" in the employers' liability act does not embrace one who entered the service of the railway company by means of a fraudulent imposture in evasion of its health rules, which he was physically unable to pass, is inapplicable to the facts of the present case, where the plaintiff, in applying for employment, falsely gave his age below the age limit set by the rules respecting hiring, but where the actual difference of age had no relation to his physical fitness; where the false representation was not shown to have deceived the company or to constitute under its rules a ground for discharge; and where the plaintiff, at the time of his injury had worked for the company seven years and was still well under the age fixed by its rules for retirements. M. St. P. v Rock, 279 US 410 distinguished; 184 M 126, 238 NW 4 affirmed. M. St. P. v Borum, 286 US 447.

Specific performance of an agreement for extra-territorial arbitration. 8 MLR 250.

Historical development of commercial arbitration in the United States. 12 MLR 240.

Federal employers' liability act; misrepresentation of age in securing employment as affecting right to recover for injuries sustained in course of employment. 16 MLR 216.

Minnesota labor relations act of 1939. 24 MLR 794.

Enforceability of award at common law where statutory arbitration is contemplated. Waiver or objection to procedure by subsequent participation. 25 MLR 787.

572.02 AGREEMENT.

HISTORY. R.S. 1851 c. 96 ss. 3, 4; P.S. 1858 c. 85 ss. 3, 4; G.S. 1866 c. 89 ss. 3, 4; G.S. 1878 c. 89 ss. 3, 4; G.S. 1894 ss. 6212, 6213; R.L. 1905 s. 4381; G.S. 1913 s. 8017; G.S. 1923 s. 9514; M.S. 1927 s. 9514.

A clause in a submission to arbitrators, that there shall be no appeal or writ of error, is binding, unless fraud, corruption, or misbehavior is shown. Daniels v Willis, 7 M 374 (295).

The jurisdiction of arbitrators is special and can only be created by a compliance with the statutes. Barney v Flower, 27 M 403.

The description of the subject matter submitted need not be as specific as would be required in a pleading. Heglund v Allen, 30 M 38, 14 NW 57.

The agreement for submission must name the arbitrators. Holdridge v Stowell, 39 M 360, 40 NW 259.

The names of the arbitrators should be in the agreement before the instrument is acknowledged. N. W. G'nty v Channell, 53 M 269, 55 NW 121.

In a statutory arbitration the district court may vacate an award if there is no evidence to sustain it; but not on discretionary grounds. Borum v Mpls. St. P. 184 M 126, 238 NW 4.

Where contracting parties first agree to a statutory arbitration and later make complete submission to an arbitration which does not comply with the statute but which is good at common law, it will be given effect as a common law arbitration. This overrules Holdredge v Stowell, 39 M 360, 40 NW 259 (see dissenting opinion). Park Constr. v Ind. School, 209 M 182, 296 NW 475.

572.03 POWERS AND DUTIES OF ARBITRATORS; FILING OF AWARD.

HISTORY. R.S. 1851 c. 96 ss. 6 to 10, 19; P.S. 1858 c. 85 ss. 6 to 10, 19; G.S. 1866 c. 89 ss. 6 to 10, 18; G.S. 1878 c. 89 ss. 6 to 10, 18; G.S. 1894 ss. 6215 to 6219, 6227; R.L. 1905 s. 4382; G.S. 1913 s. 8018; G.S. 1923 s. 9515; M.S. 1927 s. 9515.

An award need not be filed in term. It may be filed with the clerk between terms. That the award is not attested by a subscribing witness does not render it void. Lovell v Wheaton, 11 M 92 (57).

Parties to a submission may vary the time for making the award. After the award is filed, the court may entertain all further proceedings on it in vacation. Heglund v Allen, 30 M 38, 14 NW 57.

Upon the filing of the agreement the court acquires jurisdiction. Holdridge v Stowell, 39 M 360, 40 NW 259.

The award may be filed with the clerk. Borum v Mpls. St. P. 184 M 138, 238 NW 4.

An agreement to submit to arbitration the account between parties relating to a partnership and all other matters in difference between them is too indefinite to show that the dissolution of the partnership, the sale of the assets thereof to one or the other of the partners, the leasing by one to the other of real property other than partnership property, and an agreement by one partner not to compete in business with the other were matters within the authority of the arbitrators to determine. McKay v McKay, 187 M 521, 246 NW 12.

Conciliators must be paid as provided for in section 572.03. OAG June 6, 1939 (270).

572.04 PROCEDURE AFTER FILING.

HISTORY. R.S. 1851 c. 96 ss. 12, 15; P.S. 1858 c. 85 ss. 12, 15; G.S. 1866 c. 89 ss. 11, 14; G.S. 1878 c. 89 ss. 11, 14; G.S. 1894 ss. 6220, 6223; R.L. 1905 s. 4383; G.S. 1913 s. 8019; G.S. 1923 s. 9516; M.S. 1927 s. 9516.

Authority to recommit for a rehearing is enabling, not restrictive, and does not forbid a recommitment where a rehearing is unnecessary. Lovell v Wheaton, 11 M 92 (57).

Filing of award gives court jurisdiction and it is competent for parties to waive all objections to award on account of formal errors and irregularities and to authorize clerk to enter judgment thereon at once without confirmation by the court. Lovell v Wheaton, 11 M 92 (57).

Motion to confirm may be brought on in vacation. Lovell v Wheaton, 11 M 92 (57); Heglund v Allen, 30 M 38, 14 NW 57.

The court may send matters back to the arbitrators for reconsideration and for a new award; or it may require the findings and award to be more specific. Johnston v Paul, 22 M 17.

All objections to the award must be made on the motion to confirm or earlier. Gaines v Clark, 23 M 64.

See, Borum v Mpls. St. P. 184 M 138, 238 NW 4; Park Constr. v Ind. School, 209 M 183, 296 NW 475.

572.05 GROUNDS OF VACATING AWARD.

HISTORY. R.S. 1851 c. 96 s. 13; 1852 Amend. s. 98; P.S. 1858 c. 85 s. 13; G.S. 1866 c. 89 s. 12; G.S. 1878 c. 89 s. 12; G.S. 1894 s. 6221; R.L. 1905 s. 4384; G.S. 1913 s. 8020; G.S. 1923 s. 9517; M.S. 1927 s. 9517.

An award will not be set aside on the ground that the arbitrators have not acted on all matters submitted to them or that they have exceeded their powers unless party complaining has been prejudiced. Daniels v Willis, 7 M 374 (295).

An action is maintainable to set aside an award on the ground of fraud. Dewey v Leonard, 14 M 153 (120).

An award may be set aside on the ground that it was procured by false testimony and false practices. Johnson v Paul, 23 M 46.

Motion to vacate must be made before award confirmed or at time of motion to confirm. Confirmation may be set aside to enable party to move to vacate. Gaines v Clark, 23 M 64.

The scope of clause (5) is not well defined. Goddard v King, 40 M 164, 41 NW 659.

Courts favor awards and every presumption is indulged in favor of their fairness. Burden of proof is on party seeking to set them aside and they will not be set aside for fraud, partiality or misconduct, except on clear and strong evidence. Mosness v German-Amer. Ins. 50 M 341, 52 NW 932; Levine v Lancashire Ins. 66 M 138, 68 NW 855; Christianson v Norwich Union, 84 M 526, 88 NW 16.

Exclusion of material evidence is ordinarily fatal to an award and the party attacking an award on this ground is only required to prove the exclusion by a fair preponderance of evidence. Mosness v Germ. Amer. Ins. 50 M 341, 52 NW 932.

An award may be set aside in part. Bouck v Bouck, 57 M 490, 59 NW 547.

An arbitrator cannot impeach his own award but he may impeach an award in which he took no part and give evidence of misconduct on the part of other arbitrators. Levine v Lancashire Ins. 66 M 138, 68 NW 855.

Every reasonable intendment will be indulged in favor of the finality and validity of an award, but if it is clearly not final and certain it may be set aside. Hoit v Berger, 81 M 356, 84 NW 48.

The determination of arbitrators in excess of the scope of their inquiry is void. Lee v Tysdal, 163 M 355, 203 NW 988.

Arbitrators do not acquire jurisdiction to make an award when they fail to give the parties an opportunity to be heard. Lee v Tysdal, 163 M 355, 203 NW 988.

Under clause (5) the district court may vacate an award if there is no evidence to sustain it; but not on discretionary grounds. Borum v Mpls. St. P. 184 M 126, 238 NW 4.

This was a statutory arbitration, and when the legislature used the term "law and fact" it did not intend that the subject matter be decided contrary to applicable law and be final and without review. Distinguishing Goddard v King, 40 M 164, 167, 41 NW 659, 661, a common law arbitration. Borum v Mpls. & St. P. 184 M 138, 238 NW 4.

Where the award of the referees so links matters submitted with matters not so submitted that they cannot be separated without prejudice, the court should not sustain a part, and set aside other parts of the award. McKay v McKay, 187 M 521, 246 NW 12.

This case must go to decision as one of arbitration at common law. When such a controversy as submitted to arbitrators for their decision upon two or more determinative issues, favorable decision of both of which for the employee is essential to his cause of action, he cannot recover where the decision of the arbitrators ignores one of the determinative issues so submitted. An award so unresponsive to the submission is void. Mueller v Chgo. N. W. 194 M 86, 259 NW 798.

In 1852 the following amendment was adopted: "Nothing in this chapter contained shall preclude the submission and arbitrament of controversies according to common law." (1852 amendments, section 98). It is clear that at this time we have optionable arbitration under the statute or at common law. Park Constr. v Ind. School, 209 M 201, 296 NW 475.

572.06 MODIFICATION OF AWARD.

HISTORY. R.S. 1851 c. 96 s. 14; P.S. 1858 c. 85 s. 14; G.S. 1866 c. 89 s. 13; G.S. 1878 c. 89 s. 13; G.S 1894 s. 6222; R.L. 1905 s. 4385; G.S. 1913 s. 8021; G.S. 1923 s. 9518; M.S. 1927 s. 9518.

572.07 JUDGMENT; CONTENTS AND EFFECT; APPEALS.

HISTORY. R.S. 1851 c. 96 ss. 16 to 19; P.S. 1858 c. 85 ss. 16 to 19; G.S. 1866 c. 89 ss. 15 to 18; G.S. 1878 c. 89 ss. 15 to 18; G.S. 1894 ss. 6224 to 6227; R.L. 1905 s. 4386; G.S. 1913 s. 8022; G.S. 1923 s. 9519; M.S. 1927 s. 9519.

Parties may stipulate against an appeal. Daniels v Willis, 7 M 374 (295).

Judgment on award has same effect as judgment in ordinary civil actions and can only be impeached, reviewed, or set aside in same manner as such judgment. Johnston v Paul, 23 M 46.

Scope of review on appeal. Gaines v Clark, 23 M 64; Heglund v Allen, 30 M 38, 14 NW 57.

The judgment must conform to the award. Bouck v Bouck, 57 M 490, 59 NW 547.

Constitutionality of statute making right to appear before court conditional upon waiver of right to hearing before board of arbitrators. 14 MLR 406.

Perjury as ground for setting aside an award after entry of judgment. 20 MLR 428.