

Summary of SC91066, *State ex rel. Union Pacific Railroad Company v. The Honorable Michael P. David*

Writ proceeding from the St. Louis circuit court, Judge Michael P. David
Argued and submitted Dec. 8, 2010; opinion issued March 1, 2011

Attorneys: Union Pacific was represented by Nicholas J. Lamb, Booker T. Shaw, James W. Erwin and David A. Stratmann of Thompson Coburn LLP in St. Louis, (314) 552-6000; and Gordon and Champlin were represented by Robert H. Wendt of The Wendt Law Firm in St. Louis, (314) 621-1775, and James Holloran and Ronnie L. White of Holloran, White, Schwartz & Gaertner LLP in St. Louis, (314) 772-8989.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A railroad seeks relief from a trial court order that it arbitrate employment claims filed by two individual plaintiffs. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri makes permanent its writ prohibiting the trial court from enforcing its order. Because there is no evidence in the record that the parties signed a written consent to arbitration, their cases are not governed by an enforceable arbitration agreement and, therefore, are not subject to arbitration.

Facts: James Gordon and Nagel Champlin filed lawsuits in the St. Louis circuit court seeking damages from Union Pacific Railroad Company pursuant to the federal employers liability act. More than 100 similar cases were filed under the act against Union Pacific in the court. In December 2006, the cases were consolidated into four groups, and the cases filed by Gordon and Champlin were consolidated with one of those groups. Ten months later, days after their two cases were severed from the group, the other plaintiffs entered into an arbitration agreement that called for each of the groups to be arbitrated separately. Neither Gordon nor Champlin was listed in the agreement, and there was no documentation before the court that there was a written arbitration agreement signed by Gordon or Champlin and Union Pacific. In June 2010, the court ordered that Gordon's and Champlin's cases be arbitrated with another of the groups. Union Pacific seeks this Court's relief from that order.

WRIT MADE PERMANENT.

Court en banc holds: Neither Gordon's nor Champlin's case is subject to arbitration. A party may not be compelled to submit to arbitration unless there is a contractual basis for concluding the party agreed to do so. Section 435.350, RSMo, provides that a written agreement to submit an existing controversy to arbitration is valid, enforceable and irrevocable. The only written arbitration agreement here provided that the written consent of all parties was required to arbitrate. The record contains no written consent signed by Champlin, Gordon or Union Pacific. Documents submitted after the case was filed in this Court are not part of the record from the trial court and, therefore, are ordered stricken. Consequently, Gordon's and Champlin's cases are not governed by an enforceable arbitration agreement.