

CHAPTER 298.

ARBITRATION.

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298.01 Arbitration clauses in contracts enforceable. A provision in any written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract; provided, however, that the provisions of this chapter shall not apply to contracts between employers and employees, or between employers and associations of employees, except as provided in section 111.10 of the statutes.

Every contract subject to Wisconsin law containing an arbitration agreement, which does not clearly negate the application of the statute, incorporates the statute and is not to be considered a common law agree-
ment. *Madison v. Frank Lloyd Wright Foundation*, 20 W (2d) 361, 122 NW (2d) 409.
See note to 111.70, citing *Local 1226 v. Rhineland*, 35 W (2d) 209, 151 NW (2d) 30.

298.02 Stay of action to permit arbitration. If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

This chapter prescribes the exclusive remedy for a person against whom an action has been brought in violation of an agreement to arbitrate and by providing for a stay pending arbitration thereby implicitly denies the validity of a contention that no action may be brought until arbitration has been had. The defendant could not defeat recovery by pleading the arbitration provision as a defense and proceeding to trial on the merits, for by failing to move for a stay it waived its right to
insist on arbitration as a condition precedent to recovery. *Schramm v. Dotz*, 23 W (2d) 678, 127 NW (2d) 779.
Where defendant demurred on the ground that plaintiff had failed to arbitrate before starting the action, the trial court properly overruled the demurrer but could not also hold that defendant had waived his right to insist on arbitration for laches because he demurred rather than ask for a stay. *Saxauer v. Luebke*, 33 W (2d) 56, 146 NW (2d) 385.

298.03 Court order to arbitrate; procedure. The party aggrieved by the alleged failure, neglect or refusal of another to perform under a written agreement for arbitration, may petition any court of record having jurisdiction of the parties or of the property for an order directing that such arbitration proceed as provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made as provided by law for the service of a summons. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the arbitration agreement or the failure, neglect or refusal to perform the same is in issue, the court shall proceed summarily to the trial thereof. If no jury trial is demanded the court shall hear and determine such issue. Where such an issue is raised, either party may, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue to a jury called and impaneled as provided in s. 270.15. If the jury finds that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury finds that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the

court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

298.04 Arbitrators, how chosen. If, in the agreement, provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or an umpire, or in filling a vacancy, then upon the application of either party to the controversy the court aforesaid or the court in and for the county in which the arbitration is to be held shall designate and appoint an arbitrator, arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and, unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator.

298.05 Court procedure. Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

298.06 All arbitrators to attend hearings, waiver; subpoenas, witness fees, contempt. When more than one arbitrator is agreed to, all the arbitrators shall sit at the hearing of the case unless, by consent in writing, all parties shall agree to proceed with the hearing with a less number. The arbitrators selected either as prescribed in this chapter or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses in courts of general jurisdiction. The summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrator or arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the court in and for the county in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner now provided for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of this state.

298.07 Depositions. Upon petition, approved by the arbitrators or by a majority of them, any court of record in and for the county in which such arbitrators, or a majority of them, are sitting may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in the courts of record in this state.

298.08 Written awards. The award must be in writing and must be signed by the arbitrators or by a majority of them.

298.09 Court confirmation award, time limit. At any time within one year after the award is made any party to the arbitration may apply to the court in and for the county within which such award was made for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified or corrected as prescribed in the next two sections. Notice in writing of the application shall be served upon the adverse party or his attorney 5 days before the hearing thereof.

Although the reviewing supreme court may disagree with the interpretation of the collective-bargaining contract reached by the arbitrator, this court will not substitute its judgment for that of the arbitrator holding that a sale, merger, or any other transaction involving a work transfer from the defendant employer-corporation was in violation of the contract, since the parties contracted for the arbitrator's settlement of the grievance complained of and that is what they received. *Dehnart v. Waukesha Brewing Co.* 17 W (2d) 44, 115 NW (2d) 490.

298.10 Vacation of award, rehearing by arbitrators. (1) In either of the following cases the court in and for the county wherein the award was made must make an order vacating the award upon the application of any party to the arbitration:

- (a) Where the award was procured by corruption, fraud or undue means;
- (b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;
- (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to

the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(2) Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

298.11 Modification of award. (1) In either of the following cases the court in and for the county wherein the award was made must make an order modifying or correcting the award upon the application of any party to the arbitration:

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;

(b) Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted;

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

(2) The order must modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

298.12 Judgment. Upon the granting of an order confirming, modifying or correcting an award, judgment may be entered in conformity therewith in the court wherein the order was granted.

298.13 Notice of motion to change award. Notice of a motion to vacate, modify or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

298.14 Papers filed with motion regarding award; docketing judgment, effect of judgment. (1) Any party to a proceeding for an order confirming, modifying or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of the time, if any, within which to make the award;

(b) The award;

(c) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

(2) The judgment shall be docketed as if it was rendered in an action.

(3) The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

298.15 Appeal from order or judgment. An appeal may be taken from an order confirming, modifying, correcting or vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action.

298.17 Title of act. This chapter may be referred to as "The Wisconsin Arbitration Act."

298.18 Not retroactive. The provisions of this chapter shall not apply to contracts made prior to June 19, 1931.